12212 PL-11 Mr. Sorrett

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195745 D 3119 DATE: December 6, 1979

MATTER OF: Zenith Controls, Inc.--Reconsideration

[Request for Reconsideration]

DIGEST:

1. Prior decision dismissing protest as untimely is affirmed where, even assuming agency led protester to believe specifications would be changed after bid opening and that it properly relied on that advice, by protester's own admission it failed to file protest within 10 days from time that it knew of its basis for protest when its product was disapproved for not complying with existing specifications.

2. Protest of agency approval of item furnished under prime contract is dismissed because approval is matter of contract administration and is not reviewable under GAO Bid Protest Procedures.

Zenith Controls, Inc. (Zenith) requests reconsideration of our decision, Zenith Controls, Inc., B-195745, October 22, 1979, 79-2 CPD 277, in which we dismissed as untimely the protest concerning the alleged restrictiveness of specifications in an Army prime contract.

The protest was based upon an alleged impropriety in the solicitation which was apparent before bid opening for the prime contract. Because such protest was not filed either with the contracting agency or our Office prior to bid opening but was filed nearly a year after bid opening, we held the protest was untimely and would not be considered. 4 C.F.R. § 20.2(b)(1) (1979).

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Zenith now requests reconsideration of our decision on the grounds that during a pre-bid meeting an Army official misled a Zenith representative into believing that the specifications eventually would be altered as they were considered unduly restrictive. Zenith submits that as a supplier to a subcontractor of the prime contractor it relied on the Army official's advice and did not file a protest until it received notice of disapproval of its initial submittal on this job.

This information does not warrant reversal of our prior decision. Even assuming that Zenith was led to believe that the specifications would be changed after bid opening, and that it properly could rely on that advice, by its own admission Zenith knew of its basis for protest in June 1979, when its product was disapproved for not complying with the existing specification. Zenith was required to file its protest within 10 days from that time. 4 C.F.R. 20.2(b)(2). The protest, however, was not filed until August and thus would be untimely in any event.

Zenith also asserts that the agency may approve a nonconforming item furnished under the prime contract. We must dismiss any objection in this regard because approval is a matter of contract administration which is the responsibility of the agency and is not reviewable under our Bid Protest Procedures. The Trane Company, B-195905, October 31, 1979, 79-2 CPD 310.

Our prior decision is affirmed.

Milton J. Socolar

For The Comptroller General
of the United States