

Protest of) Date: March 26, 1992
NEIL GARDIS & ASSOCIATES, INC.)
Solicitation No. 565480-92-A-0003) P.S. Protest No. 92-08

DECISION ON RECONSIDERATION

Neil Gardis & Associates, Inc. ("Gardis"), has timely requested reconsideration of our decision in Neil Gardis & Associates, Inc., P.S. Protest No. 92-08, in which we dismissed for untimeliness its protest of the rejection of its proposal for its stated unwillingness to produce performance and payment bonds required by the solicitation.

In its request for reconsideration, Gardis makes several points. It argues 1) that the solicitation expressly incorporated Procurement Manual ("PM") sections 7.1.3 a and 7.1.4 a, which require performance and payment bonds only for construction contracts exceeding \$25,000, and thus, the decision was mistaken in concluding that the solicitation required bonds even if the offer price was below \$25,000; 2) that the Miller Act and postal regulations, by requiring bonds for construction contracts exceeding \$25,000, by implication prohibit the Postal Service from requiring bonds for construction contracts of \$25,000 or less; and 3) that its protest was not an untimely protest of a deficiency in the solicitation, but, rather, a timely protest against the contracting officer's failure properly to implement the Miller Act and postal regulations, a circumstance Gardis could not have been aware of until March 3, 1992, when it was informed that it had not received contract award.

Postal Service regulations require that a request for reconsideration "contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying is any errors of law made or information not considered."

PM 4.5.7 n; see Lock Corporation of America, On Reconsideration, P.S. Protest No. 89-14, April 25, 1989. Reconsideration is not appropriate where the protester simply wishes us to draw from the argument and facts considered in the original protest decision conclusions different from those we reached in that decision. Fort Lincoln New Town Corporation, On Reconsideration, P.S. Protest No. 83-53, November 21, 1983.

Only the third of Gardis' points, that its protest was timely as against the improper rejection of its proposal, relates to the substantive holding of our decision or presents a matter not previously raised. As the decision noted, the contracting officer did not address the untimeliness of the protest and Gardis thus had no occasion to respond to such a claim. The protester's new contention thus appropriate for consideration.

Upon consideration, however, we are unable to agree with the protester's contentions.

As our initial decision noted, the solicitation contained provisions requiring any offeror receiving the contract to supply payment and performance bonds without regard to the contract price and neither the Miller Act nor the Procurement Manual prohibited the inclusion of such a requirement. (Indeed, contrary to the protester's continuing insistence, and as our decision noted, the Miller Act by its terms does not limit the authority of contracting officers to require bonds in situations other than those specified by the Act.) It thus was consistent with the terms of the solicitation, rather than inconsistent with them, for the contracting officer to find Gardis' offer unsatisfactory, and Gardis' protest remains against those terms and thus untimely.

The remaining points which Gardis raises in its request go not to the decision's holding, concerning timeliness, but to disagreements with the dicta of footnote 3, in which we indicated why, based on past precedent, its protest, if timely, would have been unsuccessful. Disagreement with dicta not relevant to the basis for the decision does not afford a basis for reconsideration.

On reconsideration, we affirm the dismissal of the protest.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law