



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

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August 5, 1981

The Honorable John H. Chafee  
United States Senate

Dear Senator Chafee:

By letter dated June 29, 1981, you requested that we respond to questions raised by Mr. Frederick Evans, Jr. concerning a protest filed by RHK Services under Invitation for Bids No. N62472-80-B-0433, issued by the Naval Facilities Engineering Command for fire protection services at the Naval Education and Training Center, Newport, Rhode Island.

This procurement was conducted pursuant to a Commercial Industrial Type Activities program under Office of Management and Budget Circular A-76. Under this program the agency estimates the cost of performing the work in house and the estimate is used in competition with bids from commercial firms. Award is made to a commercial bidder only if the cost of performing the services by contract is less than performance in house. Mr. Evans is an employee of the Navy currently performing these fire protection services.

RHK, a commercial firm submitting the low bid at the January 8 bid opening, filed a protest with our Office on February 13 alleging that (1) the IFB omitted vital information and instructions; (2) Government representatives were improperly interpreting a Navy instruction, and (3) the Government was deceptively presenting cost comparisons in order to make the protester's bid seem unreasonably low.

In its report to our Office in response to the protest, the Navy indicated that it believed that RHK's bid, which was much lower than the other commercial bids and the Government in-house estimate, may have been the result of an error. In the course of attempting to verify RHK's bid, the Navy discovered that RHK had estimated the requirements

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for the number of personnel needed for a fire company as four, while the Government considered five necessary. It was the agency's view that this discrepancy may have been caused by the fact that the IFB did not specifically require a five-person team. Since the agency considered a five-person team a minimum requirement, it determined that the specifications were inadequate or ambiguous and canceled the IFB pursuant to Defense Acquisition Regulation § 2-404.1(b) (copy enclosed) and proposed to readvertise the requirement. In view of the Navy's expressed intention to resolicit this requirement, RHK informed our Office on March 27 that it was withdrawing its protest.

Mr. Evans seems to object to the Navy's action in canceling and resoliciting this requirement in the face of RHK's protest. It appears that Mr. Evans views RHK's protest as untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1981) (copy enclosed). Therefore, he believes that the Navy should not have taken any action regarding the procurement.

Even if we were to assume that RHK's protest was untimely (it appears that RHK's first allegation, concerning a solicitation requirement, would have been untimely under section 21.2(b)(1) of our Procedures, but that the other two allegations may have been timely filed), our Procedures only govern consideration of protests by GAO. They do not prevent a contracting activity from taking action in response to a protest if it believes such action is appropriate.

Also, Mr. Evans implies that it was improper for the Navy to assure RHK that the requirement would be resolicited and thereby induce RHK to withdraw its protest. We do not see anything improper in the Navy's advice to RHK or in RHK's withdrawal of its protest. A significant number of protests are withdrawn because the contracting activity, after reviewing the protest, decides to take action which satisfies the protester's basic concerns. While GAO takes no further action once a protest is withdrawn, withdrawal of a protest has no bearing on what action a contracting activity may take if it believes remedial action is appropriate.

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Regarding Mr. Evan's statement that he has not received a response to his request for information submitted to our Office we are enclosing a copy of our letter of June 24 to Mr. Evans.

Sincerely yours,

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel

Enclosures (3)