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DECISION



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

FILE: B-190826

DATE: May 1, 1978

**MATTER OF: Information and Communication
Applications, Inc.**

DIGEST:

Protest based upon improprieties apparent on face of solicitation is dismissed as untimely when filed after date proposals were due. Moreover, there is no indication in record that protester's interests were prejudiced by alleged deficiency.

Information and Communication Applications, Inc. (ICA) protests the award of a contract to Applied Management Sciences, Inc. (AMS) by the Health Resources Administration (HRA), Department of Health, Education, and Welfare under Request for Proposals (RFP) No. 231-7E-0485. The solicitation called for proposals for cost based contracts to continue, update, refine and expand a program for acquiring, evaluating and disseminating data on the health manpower work force. ICA, the incumbent contractor at the time of solicitation, contends that its interests and competitive position were prejudiced by HRA's inclusion in the RFP of its then current contract and financial data with respect to contract price, provisional billing rates for indirect costs, ceilings for overhead rates, and fee. Also attached to the solicitation was a copy of the technical proposal submitted by ICA in response to the previous solicitation. ICA urges that the award be cancelled and that the procurement be resolicited as a fixed price contract in order to hold "the contractor responsible for rates as bid."

HRA challenges the timeliness of ICA's protest of December 5, 1977 under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1977) in view of the facts that the solicitation was released on July 20, 1977 and award was made to AMS on September 30, 1977. HRC conducted a debriefing for ICA on November 18, 1977, and ICA then protested.

ICA states that it did not protest upon receipt of the solicitation because the impact of the disclosure was not apparent to the protester until after the award was announced. Further, the protester states that a protest at that time could not have erased the prejudice suffered as a result of the public disclosure of its overhead rates and other financial data.

ICA's protest is untimely under Section 20.2(b)(1) of our Bid Protest Procedures which requires that a protest based upon improprieties apparent on the face of the RFP be filed prior to the closing date for receipt of initial proposals. A principal concern which is reflected in our Bid Protest Procedures is that protests be resolved at a stage in the procurement when there is a possibility of effective remedial relief. Stocker and Yale, Incorporated, B-182089, November 25, 1974, 74-2 CPD 287. While we agree with ICA's statement that disclosure of the information in question could not have been prevented through a timely protest under Section 20.2(b)(1), it is also clear that an effective remedy has become less possible because the protest was filed following a debriefing two months after ICA learned that award was made to another firm.

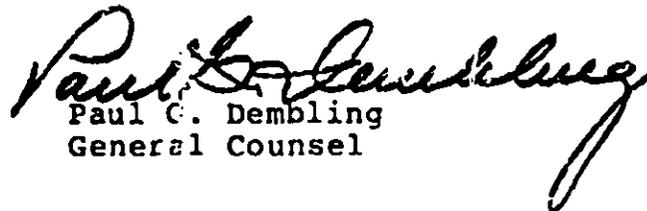
Although the timeliness issue was apparent upon receipt of the protest, it was our judgment that it should not be dismissed without an agency report in order to determine if financial information of the protester other than that in the previous contract was disclosed. The agency's report reveals that the only financial information revealed was contained in the contract which contained no supporting data. The agency contends that the contract is a public document available to anyone upon request. It points out that ICA did not designate as proprietary any of the information it submitted in response to the solicitation for the previous contract.

In any event, we are unable to conclude under the facts presented that the revelation of such information concerning a previous contract prejudiced ICA's competitive interests in this procurement.

There is no indication in the record that this information significantly influenced AMS's proposal or pricing strategy. It used burden rates negotiated with the Cost Advisory Branch of the Division of Grants and Procurement, HRA, on March 1, 1977 which was more than three and a half months prior to the release of the solicitation. Moreover, AMS's proposal projected slightly more hours for an estimated cost substantially below the proposal submitted by ICA.

ICA further contends that dissemination of its burden rates appears to violate the provisions of 18 U.S.C. § 1905 which make it a criminal offense for an offeror or employee of the United States to disclose certain confidential business information except as provided by law. The interpretation and enforcement of the criminal statutes of the United States are functions of the Attorney General and the Federal courts and it is not within the jurisdiction of this Office to determine what does or does not constitute a violation of a criminal statute. Libby Welding Company, et al., B-183872, October 1, 1975, 75-2 CPD 204. The agency has informed us, however, that the purported violation has been referred to the Office of the Inspector General, Department of Health, Education, and Welfare for consideration and appropriate action.

Accordingly, this protest is dismissed.


Paul C. Dembling
General Counsel