

DOCUMENT RESUME

08100 - [C3288391]

[Protest Alleging Awardee's Credentials Unsuitable for Performing Contract]. B-193143. November 21, 1978. 2 pp.

Decision re: Health Care Services, Inc.; by Milton J. Socolar, General Counsel.

Contact: Office of the General Counsel: Procurement Law I.

Organization Concerned: Department of the Army: William Beaumont Medical Center, El Paso, TX; Preventive Health Programs.

Authority: Freedom of Information Act (5 U.S.C. 552). 4 C.F.R. 20. 53 Comp. Gen. 533. B-190573 (1977). B-186842 (1978).

A company protested a contract award, alleging that the contract was not run properly and that the awardee's credentials were not suitable for performance of the contract. The protest was filed more than 10 days after the basis for protest was known and was untimely. Allegations concerning contract performance are matters of contract administration not generally reviewed by GAO. A request for a copy of a document under the Freedom of Information Act should not be complied with because GAO has no authority to determine what documents must be released. (RF)

DECISION

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

8391

FILE # B-193143

DATE November 21, 1978

MATTER OF Health Care Services, Inc.

DIGEST

1. Protest against award of contract is untimely under section 26.2(b)(2) of our Bid Protest Procedures where protester acknowledges basis of protest was known more than 10 days prior to filing.
2. Allegation that contractor's performance of contract has not been proper is matter of contract administration.
3. Protester's request under Freedom of Information Act, 5 U.S.C. § 552 (1976), for copy of document should be made to agency since our Office does not have authority to determine what records must be released.

Health Care Services, Inc. (Health Care), protests the award of a contract to Preventive Health Programs (Preventive) under solicitation No. DADA09-79-R-0017 by the Department of the Army for radiology services at the William Beaumont Army Medical Center in El Paso, Texas. Bid opening was on May 15, 1978, and award was made to Preventive on May 22, 1978. We have been informed by the Army that Health Care was notified of the award by letter dated May 24, 1978. Health Care filed its protest with our Office on October 10, 1978.

Health Care alleges that the contract has not been run properly and that the "credentials presented by Preventive Health Programs even though they were in perfect order were not the permanent physicians intended to fulfill this contract." Health Care also requests our Office, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976), to furnish it a copy of a document which listed the reasons why Health Care, the low bidder, was not awarded the contract.

Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978), provides in pertinent part as follows:

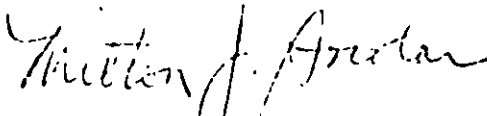
"* * * protests shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

Health Care acknowledges that its protest concerning Preventive's lack of intention to fulfill the contract with permanent physicians has been brought to its attention many times in the past and, therefore, is late. However, it refrained from protesting until some 4 months after the award "mainly because we did not want to have a reputation of taking such action." While our Bid Protest Procedures do provide for consideration of untimely protests in some circumstances, see 4 C.F.R. § 20.2(c), the stated reason is not one of them. Therefore, this basis of protest is untimely and not for consideration under our Bid Protest Procedures.

Whether the contract "has not been run properly" as Health Care alleges is a matter of contract administration not reviewable under our Bid Protest Procedures. Stadiums Unlimited, Incorporated, B-190573, December 8, 1977, 77-2 CPD 446.

Concerning the FOIA request, we are without authority under the FOIA to determine what records must be released. Health Care should apply to the Department of the Army for the release of the document desired. DeWitt Transfer and Storage Company, 53 Comp. Gen. 583 (1974), 74-1 CPD 47; Systems Research Laboratories, Inc. - Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341.

In view of the above, our Office must decline to consider the protest on its merits.



Milton J. Socolar
General Counsel