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DECISION



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

FILE: B-200523.2

DATE: June 5, 1981

MATTER OF: Southwestern Bell Telephone Co.

DIGEST:

Protest is untimely where filed nearly two months after next closing date for receipt of proposals following amendment incorporating alleged impropriety into solicitation. Subsequent contentions which serve only as support for original untimely allegation are also untimely even though allegedly based on information later obtained pursuant to Freedom of Information Act.

Southwestern Bell Telephone Company protests the lack of a Service Contract Act wage determination in solicitation No. CDDP-W004-T-W7 issued by the General Services Administration (GSA) for telephone services in Houston, Beaumont, and Galveston, Texas. The protest is dismissed as untimely.

Southwestern Bell originally raised this issue in a protest filed with this Office on September 23, 1980. On November 20, 1980, we dismissed the protest (without obtaining an agency report).

We had been informally advised that the SF98 "Notice of Intent to Make a Service Contract" in this case specified that less than five service employees would be employed under the contract. Since under those circumstances the decision to issue a wage determination is within the Department of Labor's (DOL) discretion, and there was no allegation that DOL's failure to issue such a determination was due to improper action on GSA's part, we found no matter appropriate for our consideration.

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On December 10, 1980, Southwestern Bell filed the instant protest alleging that DOL's failure to issue a wage determination was due to improper action on the part of GSA. More specifically, Southwestern Bell argued that GSA's representation that less than five service employees would be employed was arbitrary and devoid of any supporting data. As a consequence, we reopened our file on this matter and requested a report from GSA.

Both GSA and the awardee under the solicitation, Centel Communications Company, argue that the protest is untimely. They point out that the Service Contract Act requirements were incorporated into the solicitation by Amendment 5, dated July 3, 1980. This amendment contained a notice that DOL had determined no applicable wage determination to be in effect and admittedly provided the basis for Southwestern Bell's protest of September 23, 1980. They further note that under our Bid Protest Procedures, alleged improprieties not present in the initial solicitation but subsequently incorporated into it must be protested not later than the next closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1980). In this case, that date was July 31, 1980.

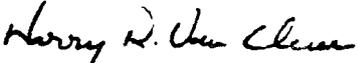
Southwestern Bell contends, however, that the improprieties complained of in the instant protest were not readily apparent on the face of Amendment 5. They argue that the "deliberate" misrepresentation made by GSA first became apparent on December 1, 1980, when a copy of the SF98, together with the supporting documentation for the representations contained therein, was received from GSA in response to a Freedom of Information Act (FOIA) request. Thus, they contend that this protest, filed within ten working days of receipt of that information, is timely. See 4 C.F.R. § 20.2(b)(2) (1980).

We disagree. The gravamen of Southwestern Bell's complaint is the absence of a Service Contract Act wage determination in the solicitation. We believe that this basis of protest was clearly apparent on the face of the solicitation as amended on July 3, 1980, and consequently any protest on that basis had to be received by the next closing date for receipt of proposals. See CSR Reporting Corporation, B-196359, March 27, 1980, 80-1 CPD 225. Since Southwestern Bell did not file its initial protest on that issue until September 23, 1980, nearly two months after that date, it was clearly untimely.

Further, even assuming that Southwestern Bell had no knowledge of the contents of the SF98 or the rationale for the representations contained therein until receipt of a response to its FOIA request on December 1, 1980, these matters provide no independent basis of protest. Rather, they are relevant only to the propriety of the lack of a wage determination. Since Southwestern Bell's protest concerning the absence of a wage determination was untimely filed, any supporting contentions filed either at that time, or as in this case, at any time thereafter, can only be considered untimely too.

The protest is dismissed.

Southwestern Bell has requested a conference in our Office on this matter. Under the circumstances, however, we do not think a conference would serve any useful purpose.


Harry R. Van Cleve
Acting General Counsel