

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

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FILE: B-213108

DATE: October 11, 1983

MATTER OF: AAA Engineering and Drafting, Inc.

DIGEST:

1. Protest that there were deficiencies in a Department of Energy operating contractor's solicitation is untimely where filed after the closing date for receipt of proposals.
2. GAO will not review a Department of Energy operating contractor's affirmative responsibility determination absent a showing of fraud or bad faith or that definitive responsibility criteria in the solicitation were not applied.

AAA Engineering and Drafting, Inc. protests the award of a contract for graphic service under request for proposals (RFP) 36-83, issued by the Department of Energy's (DOE) operating contractor, E.G.&G., Inc., for the Idaho National Engineering Laboratory. AAA contends that the RFP referenced certain standards that were not known to all the competitors; that the solicitation included inaccurate work estimates, and that the Service Contract Act wage rates were unclear. AAA also contends that the awardee does not have the financial capability to perform the contract.

This Office does not review the award of subcontracts by government prime contractors except in limited circumstances. See Optimum Systems, Incorporated--Subcontract Protest, 54 Comp. Gen. 767 (1975), 75-1 CPD 166. One exception to our general policy is subcontract awards made "for" DOE by prime management contractors which operate and manage DOE facilities. See Specialty Maintenance and Construction, Inc., B-205738, March 4, 1982, 82-1 CPD 200. Since the Idaho National Engineering Laboratory is operated "for" DOE by E.G.&G., the protest falls within our subcontract award review policy. Nonetheless, we dismiss the protest.

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The protester's allegation that the RFP is deficient with respect to the referenced standards, work estimates, and wage rates was untimely filed. Section 21.2(b) of our Bid Protest Procedures, 4 C.F.R., part 21 (1983), which applies to protests under DOE operating contractor procurements, Amray, Inc., B-208893, January 10, 1983, 83-1 CPD 22, requires that a protest of a solicitation deficiency be filed before proposals are due. DOE informally advises that offers were due by August 26, 1983. AAA's protest, filed in our Office on September 21, therefore is untimely and will not be considered on the merits.

The protester's remaining contention, that the awardee lacks the requisite financial capability, concerns the firm's responsibility, that is, whether it has the ability to meet the contract's requirements. See Janke and Co., Inc., B-210776, May 19, 1983, 83-1 CPD 534. DOE advises that the contract was awarded on September 29, and the award necessarily included a determination by the operating contractor that the firm was responsible. See John F. Small & Co., Inc., B-207681.2, December 6, 1982, 82-2 CPD 505. Because these decisions involve the exercise of considerable discretion and judgment, our Office generally will not review an affirmative determination of responsibility absent a showing of fraud or bad faith, or that definitive responsibility criteria in the solicitation were not applied. See Merchants Rent-A-Car, Inc., B-211934, June 15, 1983, 83-1 CPD 659. Neither exception applies here.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel