

**DECISION**

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

26457

**FILE:** B-213065

**DATE:** October 11, 1983

**MATTER OF:** Behavioral Systems Southwest

**DIGEST:**

1. Allegation that the agency should have procured the required services by use of the negotiation method rather than by formal advertising is untimely since it concerns an alleged defect which was apparent on the face of the solicitation and was not protested before the bid opening date as required by GAO Bid Protest Procedures.
2. Protester's allegation that awardee's performance plans are not adequate for compliance with contract requirements raises an issue with respect to the contracting officer's affirmative determination of awardee's responsibility which GAO will not review in the absence of circumstances not present here.
3. Protester's allegation that the awardee does not have a required use permit for its facility raises an issue to be resolved by the contractor with the appropriate local authorities since the solicitation requires such a permit in general terms only and there is no indication that the contracting officer has reasonably determined that enforcement is likely and could delay performance of the contract.

Behavioral Systems Southwest (BSS) protests the award of a contract for housing aliens to Eclectic, Inc. under invitations for bids (IFB) No. WR7135-1FB-SPD83-35, issued by the Immigration and Naturalization Service,

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Department of Justice. BSS contends that the required services should have been procured by use of the negotiation method rather than by formal advertising. BSS also challenges the adequacy of the Eclectic's plans to perform the contract and it's compliance with local zoning ordinances.

This protest is dismissed.

BSS's protest that the procurement should have been negotiated rather than formally advertised is untimely under our Bid Protest Procedures. 4 C.F.R. § 21.2(b)(1) (1983). Under these procedures, a protest based on alleged improprieties in any type of solicitation which are apparent prior to the bid opening date or the closing date for receipt of initial proposals must be filed before such date. It should have been apparent to BSS upon receipt of the IFB that the procurement was to be conducted by formal advertising procedures. Thus, its protest that formal advertising is inappropriate for the required services, filed more than 2 months after bid opening is clearly untimely and will not be considered on the merits. See Owl Resources Company, B-210094, April 29, 1983, 83-1 CPD 461.

BSS also contends that the awardee has not applied for the proper use permit for the facility it will use to house the aliens. Where, as appears to be the case here, the solicitation requires in general terms only that the contractor have all necessary licenses and permits, such a contention even if true, would provide no basis on which the contracting officer could have rejected the awardee as non-responsible since this is a matter to be resolved by the contractor with the appropriate local authorities. See Hooper Goode, Inc., B-209830, March 30, 1983, 83-1 CPD 329. The only exception to this general rule applies to situations where the contracting officer reasonably determines that attempts to enforce such ordinances are likely and could interrupt and delay performance under the contract. See Goodhew Ambulance Services, Inc., B-209488.2, May 9, 1983, 83-1 CPD 487. There is no indication in BSS's protest that the exception should be applied here.

BSS's allegations with respect to the awardee's performance plans raise an issue as to the responsibility of the awardee. J. Baranello & Sons, 58 Comp. Gen. 509 (1979),

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79-1 CPD 322. Our Office will not review a contracting officer's determination that a prospective contractor is responsible unless the solicitation contains definitive responsibility criteria which allegedly have not been applied or there has been a showing of fraud or bad faith on the part of the procuring officials. REDM Corporation, B-211197, April 21, 1983, 83-1 CPD 428. There is no indication in the protest letter submitted by BSS that either of these exceptions should be applied here.

The protest is dismissed.

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