

**DECISION**

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

**FILE:** B-214471

**DATE:** July 16, 1984

**MATTER OF:** Pascua Yaqui Tribe

**DIGEST:**

1. Tribe which was not a potential or actual offeror is not an "interested party" under GAO Bid Protest Procedures to challenge the evaluation criteria used since it is not directly affected by the criteria used and furthermore a disappointed offeror under the solicitation is a party with more direct and substantial interest in asserting this ground of protest.
2. Protest alleging solicitation improprieties which were apparent prior to the closing date for receipt of initial proposals filed after that date is untimely and not for consideration on the merits.
3. Tribe whose members are to be recipients of services provided by contractor may be an "interested party" under our Procedures to challenge the responsibility of awardee; however, our Office does not review protests against affirmative determinations of responsibility except in limited circumstances not present here.

The Pascua Yaqui Tribe protests the award of a contract to El Rio Santa Cruz Health Center under request for proposals (RFP) No. 0003-9-06-83 issued by the Indian Health Service, Department of Health and Human Services for providing health services to members of the Tribe residing on or near its reservation in the vicinity of Tucson, Arizona. The protester contends that El Rio has a history of unsatisfactory performance on previous contracts and therefore is incapable of performing this contract. The protester also questions the criteria used by the agency in determining "the technical and financial equalization" of the proposals submitted.

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We dismiss the protest.

Our Bid Protest Procedures require that a party be "interested" for its protest to be considered. 4 C.F.R. § 21.1(a) (1984). In determining whether a protester satisfies the interested party criterion, we examine the degree to which the asserted interest is both established and direct. Union of Public Works Center, San Francisco Bay Employees, B-214206, March 12, 1984, 84-1 CPD ¶ 286. In making this evaluation, we consider the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. Kenneth R. Bland, Consultant, B-184852, Oct. 17, 1975, 75-2 CPD ¶ 242. The party's relationship to the question raised by the protest must be direct. Where there is an intermediate party of greater interest, we generally have considered the protester to be too remote from the cause to establish interest within the meaning of our Procedures. Union of Public Works Center, San Francisco Bay Employees, supra.

As a general rule, the interests involved in whether the award of a contract is proper are adequately protected by limiting the class of parties eligible to protest to disappointed bidders or offerors. Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD ¶ 374. Where, however, a noncompeting entity, such as a labor union or a civic or trade association, has a stated interest in the procurement which is sufficiently compelling, we have considered its protest. See Falcon Electric Company, Inc., B-199080, April 9, 1981, 81-1 CPD ¶ 271, and cases cited therein. Usually these protesters have a substantial economic interest in the outcome of the procurement. See Department of Labor Day Care Parents' Association, 54 Comp. Gen. 1035 (1975), 75-1 CPD ¶ 353.

We believe the Tribe is not an interested party within the meaning of our Procedures to protest the evaluation criteria used. The Tribe's interest in this procurement is that its members are the recipients of the services to be provided by the contractor. It was not a potential or actual offeror for this contract. As a noncompeting entity, the Tribe was not directly affected by the criteria used in evaluating proposals and therefore does not have the direct relationship to this issue needed to maintain a protest.

Furthermore, the record shows that one acceptable proposal in addition to El Rio's was received under the solicitation: that disappointed offeror has not protested

the evaluation criteria used. We believe the disappointed offeror is a potential protester who has a more direct and substantial interest than the Tribe with respect to this matter. See Professional Helicopter Pilots Association, B-208031.2, Oct. 22, 1982, 82-2 CPD ¶ 363; Cardion Electronics, 58 Comp. Gen. 591 (1979), 79-1 CPD ¶ 406.

In any event, this aspect of the protest is untimely. Our Procedures require that protests based on alleged solicitation improprieties which were apparent prior to the closing date for receipt of initial proposals be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1984). We have been advised by the agency that the closing date here was September 6, 1983. Since the evaluation criteria were clearly set forth in the solicitation, the protest filed on February 24, 1984 is untimely and not for consideration on the merits. See Work System Design, Inc., B-214250, Feb. 10, 1984, 84-1 CPD ¶ 175.

With regard to the Tribe's challenge of El Rio's capability to provide the health services, the Tribe, as the recipient of those services, may have a sufficiently compelling interest to qualify as an interested party. However, it is not necessary to decide this question because this contention goes to the firm's responsibility and our Office does not review protests against affirmative determinations of responsibility unless a protester makes a showing of either possible fraud or bad faith on the part of the procuring officials or that definitive responsibility criteria in the solicitation were not applied. 4 C.F.R. § 21.3(g)(4) (1984); Virginia Trane Service Agency, Inc., B-214014, Jan. 30, 1984, 84-1 CPD ¶ 139. Neither exception is applicable here.

The protest is dismissed.

We note that the Tribe was involved in the evaluation and selection of the contractor in that a representative of the Tribe was a member of the technical evaluation panel which reviewed the proposals submitted in response to this solicitation. Although the record indicates that the representative of the Tribe found the other acceptable proposal superior to El Rio's, it is clear that the Tribe did have an opportunity to participate in the selection process.

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