

Shanks



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Indian Center of Omaha Inc.

File: B-230965; B-230966

Date: July 22, 1988

DIGEST

1. Protests that proposed awardee is not eligible for award under Buy Indian Act small business set-asides is denied where there is no indication of record that determination of awardee's eligibility was other than proper.
2. Protests challenging the management competence of proposed awardee concerns agency's affirmative determination of responsibility which, in this case, is not a matter for consideration under the Bid Protest function of the General Accounting Office.
3. Protest that solicitation's "scope of work" provision was vague and poorly written is dismissed as untimely where not asserted until after award of the contract, well beyond the closing date for receipt of proposals.

DECISION

The American Indian Center of Omaha Inc. (AICO) protests the contract awards under requests for proposals (RFPs) Nos. 87-26 and 87-27, both of which were issued by the Public Health Service (PHS), Department of Health and Human Services, as small business set-asides under the Buy Indian Act (25 U.S.C. § 47 (1982)), as implemented by the provisions of 48 C.F.R. ch. 3, appendix A - PHS § 380.5 et seq. (1988). The agency issued RFP No. 87-26 for the provision of an Urban Indian Health Program to serve eligible residents of the Omaha, Nebraska, metropolitan area. The provision of an Urban Indian Alcoholism Treatment Program to serve eligible residents of Iowa, Nebraska and the Aberdeen area was required under RFP No. 87-27.

We deny the protests on the first basis and dismiss them on all other bases.

Of three proposals submitted in response to RFP No. 87-26, and two proposals submitted in response to RFP No. 87-27,

042789

all except those of the awardee, Nebraska Urban Indian Health Coalition, Inc. (NUIHC), were found to be unacceptable. AICO, however, has not protested the rejection of its proposals. Rather, AICO alleges in both protests that NUIHC is not an "independent corporate entity" having a 100-percent degree of Indian ownership, as required by section L, clause 14, of the solicitations. The protester contends that NUIHC is, therefore, ineligible to receive awards under the subject solicitations. The agency denies these allegations.

The solicitations state in section L, clause 14(d) that offers are solicited only from Indian firms, and offers received from concerns that are not Indian firms will be considered nonresponsive. Under the regulations which govern the use of the negotiation authority of the Buy Indian Act by the Indian Health Service of the PHS--the contracting entity here--the determination as to whether a contract to be awarded under the Buy Indian Act is likely to be properly executed in accordance with (among other considerations) the requirements for qualification as an "Indian firm" is to be made by the contracting officer prior to award. 48 C.F.R. § PHS 380.505(b). Those regulations define an "Indian firm" as:

". . . a sole enterprise, partnership, corporation, or other type of business organization owned, controlled, and operated by one or more Indians . . . or a nonprofit firm organized for the benefit of Indians and controlled by Indians."
48 C.F.R. § PHS 380.502-2.

The record shows that prior to the award of the subject contracts, the contracting officer, on the basis of information provided by NUIHC, determined that NUIHC met the requirements for 100-percent Indian ownership and control was, therefore, eligible for the awards. Further, there is no indication in the record that the contracting officer's determination in this instance was other than proper. We, therefore, find no merit in AICO's challenge to NUIHC's eligibility for the awards under the Buy Indian Act.

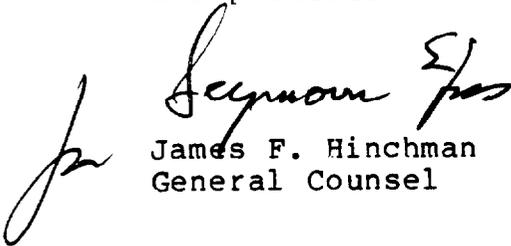
AICO also alleges that NUIHC is, in general, incompetent to manage the subject contracts properly and, with respect to RFP No. 87-27, that the solicitation's scope of work is so vague and poorly written as to render "arbitrary" any award based thereon.

As the agency report suggests, AICO's allegations concerning NUIHC's competency to manage the contracts concern affirmative determinations of responsibility which, under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1988), are not

for review in this case. The agency also points out, and we agree, that the protester's allegation that RFP No. 87-27 was deficient is untimely raised since protests of solicitation deficiencies must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

In its comments on the agency report, the protester alleges that since HHS' issuance in 1986 of certain solicitations-- apparently for services similar to those being procured under the subject solicitations--the agency has acted in bad faith with respect to the procurement of these services.^{1/} This allegation will not be considered since the conduct of those procurements is not the subject of this protest and, in any event, any protest of them now would also be untimely. 4 C.F.R. § 21.2(a).

The protests are denied in part and dismissed in part.



James F. Hinchman
General Counsel

^{1/} The protester requested, under our Bid Protest Regulations, 4 C.F.R. § 21.3(c) et seq., certain documents, several of which concern these referenced prior procurements. We have taken no action upon the requests because the allegations in connection with which they were made will not be considered. See 4 C.F.R. § 21.3(c).