



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Creative and Training, Ltd.
File: B-258925
Date: November 16, 1994

DECISION

International Creative and Training, Ltd. (ICT) protests the Department of the Army's award of a contract to perform visual information services for Tripler Army Medical Center to WP Photography pursuant to request for proposals No. DADA16-R-0004. ICT contends that WP Photography's proposal is technically unacceptable because it does not offer personnel of the experience level--journeyman--required under the terms of the RFP. We dismiss the protest as untimely.

In its initial protest letter, dated October 7, 1994,¹ ICT asserted that WP Photography's lowest-priced proposal was not compliant with the RFP's requirement for journeyman-level employees. ICT stated that it first learned on September 29 that WP had offered employment at less than Service Contract Act (SCA) rates to three of ICT's employees who met the RFP's requirement for journeyman-level employees. Subsequently, by letter of November 4, the protester explained that it can tell that WP Photography does not intend to use journeyman employees to perform the contract, because WP Photography's proposed total price is so low that WP Photography must plan on paying wage rates that are less than the SCA wage rates required for journeyman-level employees. The protester also argued for the first time in its November 4 letter that the offers submitted by the second- and third-low priced offerors are technically unacceptable for the same reason.²

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994), protests alleging other than solicitation improprieties (for example, improper action by the contracting officer) must be filed not later than 10 days

¹Filed in our Office on October 11, 1994.

²ICT's total proposed price is fourth-low.

after the protester knew, or should have known, its basis for protest. The contracting officer gave ICT a copy of the abstract of offers shortly after the contract was awarded to WF Photography on September 2, and by letter of September 7, the president of ICT stated that he had reviewed the abstract of offers and that "no protest will be filed." As ICT's president knew from the abstract the total proposed prices of the three lowest-priced offerors before September 7, ICT should have known its basis for protest at that time as well, because, as noted above, ICT allegedly deduced from the total proposed prices that the three lower-priced offers were based upon using employees that were less than journeymen-level in experience. Because ICT did not file its protest in our Office until October 11--more than 1 month after the protester knew its basis for protest--the protest is untimely.³


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Assistant General Counsel

³In any event, the argument that some firms may be offering to perform the contract at labor rates that are less than the required SCA minimum wage rates provides no reason to sustain the protest since the offers may simply constitute below cost offers for some labor categories. See Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339, and cases cited.