



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel
B-232051

August 18, 1988

The Honorable Jim Moody
Member, United States House of
Representatives
135 West Wells Street, Room 618
Milwaukee, Wisconsin 53203

Dear Mr. Moody:

We refer to your letter dated July 13, 1988, on behalf of Jim Baker, owner of Curtis-Universal Inc., requesting our review of the procurement procedures and cost estimations for solicitation No. DAKF57-86-B-0060, issued by the Contracting Division, Fort Lewis, Washington.

Curtis-Universal submitted the only bid on this solicitation for performance of all ambulance services at Madigan Army Medical Center. These services were being performed by the government and, in accordance with Office of Management and Budget (OMB) Circular A-76 and paragraph L-19 of the solicitation, a cost comparison was performed to determine whether it would be more economical to accomplish the work under contract or by government performance. Since the cost comparison established that continued government performance would be more economical, the solicitation was canceled. By letter of June 6, 1988, Curtis-Universal protested to the Army that the cost comparison was unfair because the solicitation had not advised bidders of the nature of the cost comparison. The Army denied the protest on the basis that the types of computations it made to determine the cost of contracting out were those prescribed by applicable regulations. Curtis-Universal has not contested the dollar amounts of those computations.

In response to your July 13 request, your letter and enclosures were examined for consideration of an audit. After careful review, it was determined that an audit was not warranted since the circumstances involved concerned this procurement alone.

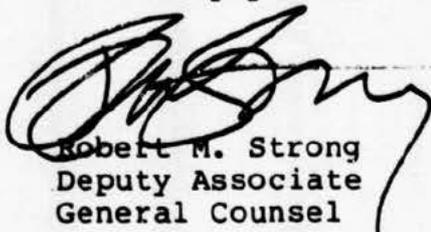
While it may not be appropriate for an audit, an objection to the conduct of a single procurement is reviewable as part of our bid protest function. More specifically, we do review procurements conducted pursuant to OMB Circular A-76

for the limited purpose of determining whether the agency conducted the cost comparison in accordance with applicable procedures. Any such protest, however, must be timely filed under our Bid Protest Regulations, which are published at Part 21, Title 4, of the Code of Federal Regulations. Where, as here, a protest has been filed initially with the contracting agency, our Regulations prescribe that any subsequent protest to this Office must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. According to your correspondence, Curtis-Universal was notified of the denial of its protest on June 10, 1988. However, your letter was not received at our Office until July 15, 1988, clearly outside the 10-day deadline. Even if we were to consider your letter as the filing of a bid protest on behalf of your constituent, it would be untimely and, therefore, not for consideration by our Office.

Our Regulations regarding the timeliness of protests apply regardless of the source of the protest. In order for the bid protest process to be meaningful, our Office must have the opportunity to consider a protest while it is still possible to take effective action with respect to the procurement, when the circumstances warrant it. It is therefore essential that we adhere to the timeliness requirements of our Regulations. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this would suggest to the procurement community that the timeliness provisions of our Regulations could be circumvented by submitting a request through a Member of Congress.

If further information is desired, please contact
Mr. John Mitchell at .

Sincerely yours,



Robert M. Strong
Deputy Associate
General Counsel