

DECISION



95355
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548
20534

FILE: B-179633

DATE: February 12, 1975

MATTER OF: Pacific Architects and Engineers, Incorporated

DIGEST:

1. Neither absence of written advice to General Accounting Office that protested solicitation had been effectively canceled and requirement re-issued under new solicitation nor consequent continuation of protest in "open" status changes academic character of protest under canceled solicitation.
2. Circumstances relating to academic protest under canceled solicitation do not constitute good cause so as to enable consideration of admitted untimely protest under re-issued solicitation for same requirement; untimely protest concerning alleged defects in re-issued solicitation does not raise issue "significant to procurement practices" so as to permit consideration notwithstanding untimeliness. 4 C.F.R. § 20.2(b) (1974).

Early in 1974 the U. S. Naval Supply Depot, Yokosuka, Japan, issued Solicitation No. N62649-74-R-0052 for services needed to operate and maintain the U. S. Naval Radio Station, Yosami, Japan.

On May 23, 1974, Pacific Architects and Engineers, Incorporated (PAE) protested the proposed award of a contract for the services to another concern. The thrust of PAE's protest was that "[n]egotiations for this procurement are taking a * * * prejudicial inclination in favor of the incumbent [contractor]."

Thereafter, counsel for PAE and the Department of the Navy attempted to resolve the issues in controversy through informal discussions. These discussions, we are told, lasted several months and resulted in the issuance of a revised solicitation (No. N62649-75-R-0114) for the services. The new RFP was issued on September 15, 1974, (approximately) and provided a closing date for receipt of proposals on September 30, 1974. (The

Department asserts, and PAE does not deny, that the approximate two week interval between the issuance of the new RFP and the closing date was acceptable to PAE.)

On October 8, 1974, 8 days after the closing date, we received a copy of a letter dated September 30, 1974, from PAE to the procuring activity. The letter stated that PAE declined to submit a proposal under RFP-0114 since the company found the "current solicitation to be deficient in three major areas." PAE also commented that it would "examine our various options for redress of this highly irregular procurement situation", but that it could not "complain of losing (the award under RFP-0114) in a fair competition."

Contrary to the ambiguous character of the September 30 PAE letter regarding the intent (or non-intent) of PAE to file a protest under RFP-0114, PAE's letter of October 11, 1974, to GAO requested "investigation of the regularity of this procurement [RFP-0114]." We considered this request to be the filing of a formal protest.

PAE's October 11 letter indicates that it considers its protest (concerning solicitation defects in RFP-0114) to be untimely. This admission is made, since, in PAE's view, "protests based on improprieties apparent prior to the closing date [September 30, 1974] * * * should be filed prior to such closing date."

Notwithstanding PAE's acknowledgement of untimeliness, it asserts that the "pendency of PAE's subject protest [under RFP-0052] and the issuance of a revised solicitation, without a report on the protest to your Office and without cancellation of the prior solicitation [RFP-0052], warrant investigation [of the protest under RFP-0114]."

The Department has submitted an initial report on the protest which contains memos of phone conversations and correspondence between representatives of PAE and the procuring activity. The materials, in our view, reasonably support a conclusion that, although the Navy did not formally cancel RFP-0052, it was the understanding of PAE and the procuring activity that RFP-0052

had been effectively canceled and had been replaced by RFP-0114. For example, a letter dated August 23, 1974, from the contracting officer to PAE (Minato-ku, Tokyo) stated: "This office [the procuring activity] based on guidance from higher authority, is preparing a re-solicitation [RFP-0114] for operation and maintenance of the U. S. Naval Radio Station, Yosami. Your firm will be solicited when this office issues a Request For Proposals."

Consequently, the protest under RFP-0052 was rendered academic as of the date of the effective cancellation of the RFP (no later than mid-September 1974 when the new RFP was issued). Had written advice been furnished our Office of the informal cancellation of the prior solicitation and the issuance of the new RFP, we would have immediately closed our file on the protest under RFP-0052. The absence of the advice and the continuation of PAE's protest in an "open" status at our Office, however, did not change the academic character of the protest under RFP-0052. Consequently, PAE's protest under RFP-0052 is not for our consideration.

The admitted untimely protest under RFP-0114 may be considered only if "good cause" has been shown or the protest raises "issues significant to procurement practices or procedures." 4 C.F.R. § 20.2(b) (1974).

The only argument PAE makes for our consideration of its untimely protest under RFP-0114 relates to the circumstances surrounding its academic protest under RFP-0052. These circumstances do not, in our view, constitute "good cause" so as to enable consideration of the protest under RFP-0114. Nor do we consider the alleged solicitation defects in RFP-0114 an issue "significant" to procurement practices. Consequently, no further consideration will be given to PAE's protest under RFP-0114.


Acting Comptroller General
of the United States