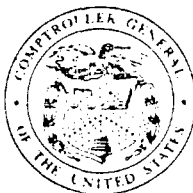


DECISION

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

60564

FILE: B-185394

DATE: February 24, 1976

MATTER OF: COMTEN

98559

DIGEST:

Untimely protest that provision of RFP is unduly restrictive is not for consideration as significant issue since it does not concern a matter of widespread interest, and a decision on merits would serve no useful purpose.

This is a protest by COMTEN concerning an allegedly restrictive provision in request for proposals (RFP) No. FO5602-76-R-0001, issued on August 6, 1975, by the United States Air Force Accounting and Finance Center (AFAFC), Denver, Colorado, for cathode ray tubes, controllers, and printers. COMTEN states that it submitted a proposal on September 3, 1975, the closing date for receipt of proposals, but on September 17, 1975, it advised the Air Force that it did not intend to comply with the RFP's allegedly restrictive "Maintenance Vendor Limitation", which limited to four the number of authorized maintenance sources for the controllers being procured. Since COMTEN was not one of the four, it requested that it be allowed to provide its own maintenance.

COMTEN states that when it learned on September 29, 1975, that the Air Force would most probably retain the limitation of maintenance sources in the RFP, it notified the Air Force by letter of October 3, 1975, that "it intended to protest the limitation should COMTEN's bid be deemed non-responsive." The firm requested that it be allowed to furnish its own maintenance service, particularly since its "controllers require close technical coordination between COMTEN hardware and software technical personnel for implementation, problem solving, and change orders." By letter of October 15, 1975, the Air Force notified COMTEN of the award to IBM and that its proposal was rejected since it did not meet the limited maintenance source restriction in the RFP, which the Air Force reiterated was a necessary policy and which would be continued for the foreseeable future. In this connection, the Air Force advised:

"Early in 1975, after careful consideration, the Directorate of Data Automation determined that a maximum of four vendors servicing on-line central site computer equipment could be tolerated without adverse economical or functional effect on computer operations. With the increase of IBM 'Plug Compatible' ADPE vendors and ADPE 'Third Party' vendors, it became evident that unlimited vendors servicing a single IBM computer site would be detrimental to efficient and economical operations. Experience confirmed that multiple vendors increased the complexity of diagnosing equipment malfunctions, caused unacceptable loss of computer operational use time due to each Vendor's Preventive Maintenance and Remedial Maintenance time requirements and increased the costs of administering ADPE service contracts of unlike terms and conditions."

On November 21, 1975, COMTEN filed its protest.

Since COMTEN's protest is based upon an alleged impropriety in the solicitation which was apparent prior to the closing date for receipt of initial proposals and was filed after the closing date for receipt of proposals, it is untimely under 20.2(b)(1) of our Bid Protest Procedures. 40 Fed. Reg. 17979 (1975); Oven Industries, Inc., B-183995, December 17, 1975, 75-2 CPD 398. COMTEN recognizes that its protest is untimely, but asserts that the Air Force's use of this limitation "clearly involves issues which are significant to procurement practices and involves procurement principles of widespread interest."

COMTEN contends that its protest presents procurement issues concerning entrenchment of contractors, viability of the competitive process, and the potential institutionalization of an unwarranted limitation upon competition. COMTEN requests that we decide this case since this limitation could be applied to any area of procurement where maintenance services are required, and, therefore, is of widespread interest. COMTEN also protests the alleged Air Force delay in responding to COMTEN's request to use its own maintenance service. COMTEN contends that the Air Force letter of October 15, 1975, indicated that the Air Force policy on limiting maintenance sources was finalized in early 1975, yet the Air Force waited to notify COMTEN of that policy until after award.

Our reason for imposing time limits on the filing of protests, of course, is to assure that the Government's procurement is not burdened by untimely protests. Del Norte Technology, Inc., B-182318, January 27, 1975, 75-1 CPD 53. Exceptions to our timeliness standards are made where good cause is shown or where issues significant to procurement practices or procedures are raised. Section 20.2(c) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975). The reason for the "good cause" exception is obvious. Elementary fairness requires that this exception be permitted. The significant issue exception is dictated by another consideration. Where a question raised in an untimely protest goes to the heart of the competitive procurement process, that process could be better served by a decision on the merits of the question rather than by a dismissal of the protest because of its untimeliness. See, for example, LTV Aerospace Corporation, B-183851, October 1, 1975, 55 Comp. Gen. ___, 75-2 CPD 203; Willamette-Western Corp., et al., 54 Comp. Gen. 375 (1974), 74-2 CPD 259. At the same time, however, we recognize that the significant issue exception must be exercised sparingly. Otherwise, our timeliness standards could become meaningless. Therefore, we will undertake to decide an untimely protest under this exception only if it is clear to us that a decision on the merits would serve a useful purpose.

With respect to COMTEN'S untimely protest, the record does not support the argument that the protest is based on a matter of widespread interest. The limitation of maintenance sources concerns only one line item, the two controllers. It also appears that this clause has been used in only two procurements, and there is no indication that its future use will apply beyond the activity involved in this case. COMTEN contends that the issue is significant since this type of clause could possibly be used in other procurements, citing Fairchild Industries, Inc., B-184655, October 30, 1975, 75-2 CPD 264. That decision, however, did not propose to consider as significant an issue stemming from a practice whose future use in other types of procurements is speculative and hypothetical at best. Since the issue raised by COMTEN is not a matter of widespread interest, it would not serve a useful purpose to decide it.

Finally, as to whether the Air Force acted precipitously in making the award on October 6 or in notifying COMTEN of the reasons for its rejection, we note that COMTEN's initial protest to the Air Force was filed by letter of October 3, 1975. The Air Force replied to this protest by letter of October 15, 1975, notifying the protester of the October 6 award to IBM.

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It appears that prior to October 3, 1975, the Air Force contracting officer attempted to obtain the protester's agreement to the disputed maintenance provision of the RFP, but that his efforts were not successful. It does not seem to us, from these facts, that the Air Force acted precipitously in making the award on October 6. In any event, COMTEN's protest to this Office is untimely and will not be considered on its merits.

Accordingly, the protest must be dismissed.


Paul G. Dembling
General Counsel