

DECISION



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

12577

Seigel
Proc II

[Protest Alleging Solicitation Defects]

FILE: B-196011

DATE: January 18, 1980

MATTER OF: International Technical Services

DIGEST:

1. Protest alleging defects apparent on face of solicitation filed after date set for bid opening is untimely under Bid Protest Procedures and is dismissed.
2. Bidder's certification of compliance with Wage and Price Standards may not be questioned by contracting officer absent determination of noncompliance by the Council on Wage and Price Stability.
3. Agency was not required to comply with procedural requirement of DAR relative to contract award while protest is pending at GAO because agency had not received copy of protest and had not received oral notice from GAO of protest prior to making award.

International Technical Services (ITS) protests award of a contract to Trend Western Technical Corporation (Trend) under Invitation for Bids (IFB) F04693-79-B-0003 issued by the Department of the Air Force for management and operation of base maintenance and civil engineering services at Los Angeles Air Force Station.

ITS initially protested on September 12, 1979 that the solicitation was ambiguous but it failed to file the protest prior to the September 5 bid opening as required by Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b) (1979). This provides in pertinent part, as follows:

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"Protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

ITS's initial protest, therefore, is untimely and not for consideration. F&H Manufacturing Corporation, B-195954, September 28, 1979, 79-2 CPD 231; Ronald Campbell Company, B-196018, September 25, 1979, 79-2 CPD 225.

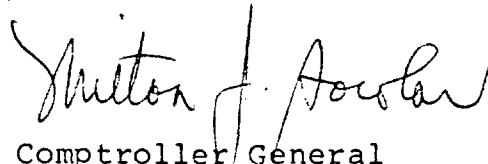
After award was made to Trend, ITS complained that the award should not have been made while its initial protest was pending at GAO and asserted that the contracting officer knew Trend was not in compliance with the Wage and Price Standards referenced in amendment 0003 to the IFB. The amendment added to the IFB a clause which provided, in part:

"(a) By submission of this bid or offer, the bidder or offeror certified that he is in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR Part 705, Appendix, and Part 706)."

Defense Acquisition Regulation (DAR) § 1-341 (1976 ed.) provides that a bidder's certification of compliance with wage and price standards will be accepted unless the company has been determined by the Council on Wage and Price Stability (CWPS) to be noncompliant. It further cautions contracting officers that it is not their responsibility to determine if an offeror or contractor is or is not in compliance with the wage and price standards. In submitting its bid, Trend certified it was in compliance with the wage and price standards, which the contracting officer was required to accept in the absence of a contrary determination by CWPS. There has been no such determination. We therefore find no basis for questioning the contracting officer's acceptance of Trend's certificate of compliance with wage and price standards.

As to the propriety of the award action while the protest was pending here, the record indicates that the Air Force was orally notified by our Office of the September 12 protest after the award had been made on September 13, and the Air Force states that the copy of the protest sent to the contracting officer by the protester was not received prior to award. Consequently, the DAR provisions concerning contract award during the pendency of a protest at GAO are not applicable here. Although ITS had advised the agency of its intention to file a formal protest prior to the award, the DAR provisions need not be followed on the basis of such oral advice since they apply only when a contracting agency is advised or knows that a written protest has in fact been filed.

The protest is denied in part and dismissed as to the remainder.



For The Comptroller General
of the United States