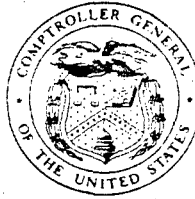


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# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-198006

DATE: August 22, 1980

MATTER OF: HETRA Computer and Communications  
Industries, Inc.

### DIGEST:

1. [Protest alleging restrictiveness of solicitation clause requiring low cost offeror to perform benchmark within 5 days of notification by agency is untimely because it was not filed with agency or GAO prior to closing date for receipt of initial proposals.]
2. Protest that request for best and final offers was misleading and that discussions should have been reopened after due date for best and final offers is denied where request was clear, and agency was not required to conduct further discussions after best and final offers.

HETRA Computer and Communications Industries, Inc. (HETRA), protests the actions of the Department of Agriculture (Agriculture) regarding a testing requirement under request for proposals (RFP) No. ASCS-9-R-79DC. The procurement is for the purchase of electronic data processing hardware, software and support services. A benchmark was required of the lowest cost offeror, and the offeror was required to move its equipment to the test site within 5 days after notification of the benchmark date.

Proposals were due on August 6, 1979. HETRA stated, in its proposal, that it would comply with the 5-day requirement. However, during negotiations HETRA said that it could no longer comply with the requirement due to internal reasons, but would demonstrate part of the system within 30 days and all of it within 60 days. The contracting officer

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advised HETRA that Agriculture could not delay the procurement cycle for that long and that HETRA must comply with the requirement. This exchange occurred several times during discussions, with HETRA and Agriculture holding firm to their positions.

Agriculture then requested best and final offers from HETRA and other offerors, which were due on February 14, 1980. In the request to HETRA, Agriculture pointed out several areas of HETRA's proposal that required further clarification, and included an admonition that the lowest cost offeror must offer to meet the benchmark time requirement. The request also stated that negotiations would be closed as of the due date for best and final offers. HETRA did not offer to meet the benchmark requirement in its best and final offer. On February 15, 1980, HETRA protested to Agriculture, arguing that the benchmark requirement was restrictive of competition. In a telephone conversation on February 26, Agriculture denied HETRA's protest as untimely and refused to discuss the "responsiveness" of HETRA's proposal with regard to the 5-day requirement.

HETRA then protested to GAO, arguing that the fact that Agriculture requested a best and final offer from HETRA led HETRA to believe that its proposal was fully acceptable without meeting the 5-day benchmark requirement, even though Agriculture's request reiterated that requirement. HETRA also protested Agriculture's post-best and final refusal to discuss the issue of the 5-day requirement and its affect on HETRA's acceptability. According to HETRA "such actions are inconsistent with the competitive procurement intent of Federal Procurement policies, and as such do not permit HETRA to compete on a non-discriminatory basis."

For the following reasons, the protest is dismissed in part and denied in part.

To the extent that HETRA's protest concerns the restrictiveness of the 5-day benchmark requirement, it is untimely. Protests based on alleged deficiencies obvious from the face of a solicitation must be filed

with GAO or the contracting agency prior to the closing date for receipt of initial proposals. Here, both the agency protest and the protest filed with our Office were filed long after the closing date. See 4 C.F.R. § 20.2(a),(b)(1) (1980).

HETRA complains that it was misled by the request for best and final offers, and that Agriculture improperly refused to discuss the 5-day requirement after best and final offers were received. It is clear from the request that Agriculture intended to adhere to the 5-day requirement and that no further discussions would be conducted after the due date for best and final offers. We have held that once negotiations have been conducted and best and final offers received, negotiations should not be reopened unless it is clearly in the Government's best interests to do so. ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301. Since there is no indication here that reopening would have benefited the Government in any way, Agriculture properly refused to reopen discussions.

*Harry R. Van Cleave*  
For the Comptroller General  
of the United States