

DECISION



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

FILE: B-201132

DATE: January 27, 1981

MATTER OF: Cullinane Corporation

DIGEST:

1. *Alleging* Protest after award that terms of solicitation are unduly restrictive] of competition is untimely. GAO Bid Protest Procedures require that protests based on apparent solicitation improprieties be filed before bid opening or closing date for receipt of initial proposals.
2. Prospective offeror which did not timely protest terms of solicitation and chose not to respond to solicitation is not "interested party" to protest award.

Cullinane Corporation protests the award of a contract to Software AG of North America, Inc. [for Data Base Management System and Data Dictionary software packages] under solicitation No. 15035 issued by the Government Printing Office (GPO).

Cullinane alleges that Software AG cannot supply equipment which meets all of the mandatory requirements of the solicitation, and that they therefore should be found nonresponsive. Cullinane also states that the solicitation was too restrictive for anyone to respond to and states that as a consequence it decided not to respond to the solicitation.]

If the protester's argument is that the terms of the solicitation were unduly restrictive of competition, the protest is untimely.] Under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1980),[protests based upon apparent improprieties in any type of solicitation must be filed prior to bid opening or the closing date for receipt of initial proposals.]

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[As for the allegation that Software AG cannot meet all of the mandatory requirements of the solicitation, we believe that this is a matter of responsibility rather than responsiveness as Cullinane alleges.] Cullinane presents no evidence that Software AG took exception to any of the solicitation's material requirements; its proposal therefore must be considered "responsive." Z.A.N. Company, B-198985, July 3, 1980, 80-2 CPD 10. The allegation that Software AG will not deliver software meeting the technical specifications of the solicitation involves a matter of responsibility. Nuclear Research Corporation, B-198909, June 5, 1980, 80-1 CPD 393.

[This Office does not review affirmative responsibility determinations except where the protester alleges fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied.] Peter Gordon Company, B-196370, July 18, 1980, 80-2 CPD 45; National Ambulance and Escort Services, Inc., B-196511, November 8, 1979, 79-2 CPD 342. Neither is the case here.

In any event, Cullinane is not eligible to maintain a protest under the instant solicitation. A party must be "interested" under our Bid Protest Procedures, supra, in order to have its protest considered by this Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement, the nature of the issues involved and how these circumstances show the existence of a direct and/or substantial economic interest on the part of the protester. Cardion Electronics, B-193752, June 8, 1979, 79-1 CPD 406; Die Mesh Corporation, B-192668, November 29, 1978, 78-2 CPD 374.

In Die Mesh, we held that a prospective offeror which did not timely protest the terms of a solicitation and deliberately chose not to submit a proposal was not an interested party to protest later that the eventual awardee had received preferential treatment. In that case, we found that the direct and substantial economic interests at stake were not Die Mesh's but rather those of offerors who participated in the procurement and did not receive awards. We believe that an analogous situation exists here.

In this case, it is evident that the direct and substantial economic interests at stake are those of offerors who participated in the procurement and did not receive award. Assuming that Cullinane's allegations are in fact true, it was the unsuccessful offerors who were harmed and they would have been the appropriate parties to file a protest with this Office.]

[The protest is dismissed.]

Milton J. Socolar

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General Counsel