

Kildee

19069

**DECISION**



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

FILE: B-203979

DATE: August 7, 1981

MATTER OF: Minority Affairs Institute

**DIGEST:**

Letter sent to agency immediately after debriefing, which expressed offeror's dissatisfaction with procurement process but did not use word "protest" and indicated offeror's belief that nothing could be done about award, is not protest filed with agency. Protest later filed with GAO more than 10 working days after debriefing when protester was informed of basis of protest is untimely under our Bid Protest Procedures and not for consideration on merits.

Minority Affairs Institute (MAI) protests the rejection of its offer under request for proposals No. 81-10 issued by the Department of Education (ED) to obtain English Language and occupational training for Cuban entrants.

Representatives of ED debriefed MAI on May 28, 1981, at which time MAI learned that one evaluator had scored its proposal significantly lower than the other four evaluators. MAI contends that this discrepancy in scoring appears both illogical and unjustified, and that the evaluators should have reached consensus on the scorings.

On June 2, MAI wrote the General Counsel of ED "to express our extreme dissatisfaction with the process being used by the Department of Education to award contracts." MAI then related its experience, stated its concerns, and closed as follows:

"I am sure nothing can be done about this particular contract now, but we find it necessary to make appropriate individuals aware of these inequities in the Department

*[Protest Alleging Improper Evaluation of Bid]*  
~~017827~~ 116043

of Education so that in the future this does not occur again. I am sure you were not aware of this particular situation, but our agency feels it only appropriate to inform you of our displeasure with the manner in which the Department of Education is conducting business."

We are advised that ED does not consider MAI's June 2 letter to be a protest since corrective action was not requested. Instead, in view of MAI's apparently deliberate choice of language informing ED of circumstances which should be avoided in the future, ED interprets MAI's letter as an inquiry or general complaint. ED's General Counsel reviewed MAI's concerns in this light and a reply has been sent.

We have held that although a letter need not use the word "protest" in order to be characterized as such, it must otherwise clearly convey an intention to protest. Pitney Bowes, Inc., B-200016, December 30, 1980, 80-2 CPD 448. For example, an offeror's letter received prior to bid opening which requested the contracting officer's assistance but failed to question the terms of the solicitation did not amount to a protest. Southwestern Bell Telephone Company, B-200501, July 15, 1981, 81-2 CPD \_\_\_\_.

Here, although the offeror's dissatisfaction is unequivocal, the limitation of his purpose is also established. MAI's June 2 letter conveys an intent to inform appropriate ED officials of perceived shortcomings in the conduct of a procurement to prevent their recurrence in the future. When MAI, dissatisfied with the lack of a timely reply, later elected to protest to this Office, it was fully able to express a different intent in unequivocal words. Its June 29 letter to our Office opens with the words "This is a formal letter of protest" and, after reiterating its concerns, again advises that "we are \* \* \* filing this letter of protest with your office." In these circumstances, we do not believe that MAI's June 2 letter can reasonably be interpreted as a protest.

Accordingly, the timeliness of MAI's protest to this Office must be determined by the date of the debriefing when MAI first learned the reasons its offer was rejected, not the date of ED's reply to MAI's letter of June 2.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1981), require that a protest be received by either the contracting agency or our Office within ten days after the basis for protest is known. MAI's June 29 letter to this Office, received some two months after the debriefing of May 25, 1981, was therefore not timely filed. See Vietnam Veterans Foundation, B-201014, November 28, 1980, 80-2 CPD 408.

Accordingly, the protest is dismissed as untimely.



For

Harry R. Van Cleve  
Acting General Counsel