

DECISION



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

*Shepherd
Care
119108*

FILE: B-205991

DATE: June 11, 1982

MATTER OF: Ethel Thannisch

DIGEST:

A protest against defects in a solicitation, filed after the closing date for receipt of initial proposals and more than 10 days after the initial adverse agency action is untimely under our Bid Protest Procedures.

On January 5, 1982, Mrs. Ethel Thannisch filed a protest with our Office against the award of contracts under requests for proposals (RFP) Nos. DAKF49-82-R-0010 and DAKF49-82-R-0013 issued by the Director of Industrial Operations, Fort Sam Houston, Texas, United States Army.

We dismiss the protest.

RFP No. DAKF49-82-R-0010 was issued on November 20, 1981, for the teaching of classes in English as a second language. The closing date for receipt of initial proposals was at 4 p.m., December 21, 1981.

The protest is against alleged deficiencies in the solicitation such as the reduction in contractor's qualifications and experience requirements. Also it is alleged that the student load per teacher is excessive, and a teaching certificate and previous successful performance as a Government contractor are not required.

RFP No. DAKF49-82-R-0013 was issued on November 19, 1981, for the teaching of classes in basic skills. The closing date for receipt of initial proposals was at 4 p.m. on December 14, 1981.

The protest under this solicitation is against the same type of alleged deficiencies in the solicitation noted above.

Additionally, the protester alleges that a former employee of the Army should be prevented from bidding on the latter solicitation. However, since the agency

states that this individual did not bid on the solicitation, the protest on this matter is academic and is dismissed.

We find the contentions under both solicitations, all relating to alleged improprieties apparent from the solicitations, to be untimely since the protest was not filed prior to the closing date for receipt of initial proposals as required by section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981).

The protester cites section 21.2(b)(2) (1981) as controlling, which requires protests be filed within 10 days after the basis of protest is known or should have been known. The protester contends that it was assumed that the phrase "other factors," under the evaluation factors, "price and other factors considered," would include experience and successful past performance. The protester alleges that it was not until the agency notified her of the tentative award to a bidder which did not have a teaching certificate that the protester first became aware of the basis of protest. This date is alleged to be December 13, 1981, and it is further alleged that this protest was filed with the San Antonio, Texas, Field Office of the General Accounting Office on December 23.

Section 21.2(b)(2) of our Bid Protest Procedures, upon which the protester relies, is expressly limited to "cases other than those covered in subparagraph (b)(1) of this section." Section 21.2(b)(1), as noted above, requires that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the date for receipt of initial proposals.

The protester states elsewhere in the protest that upon receipt of both solicitations, she discovered a major change in the requirements for English as a second language into part-time Basic Skills Education Program. On November 30, the protester discussed the changes with the Education Service Officer, whom she alleged to be the representative of the contracting officer. This officer justified the reduction in both time and contractor qualifications. Therefore, it is apparent that the protester knew of the alleged defects before the proposal due dates.

Even assuming that the discussion between the protester and the agency constituted an oral protest, the justification of the reductions in requirements by the

agency constituted the initial adverse agency action. Since the protest was not received until January 5, 1982, more than a month after the November 30, 1982, meeting, it would also be untimely under section 21.2(a), which provides that if a protest is filed initially with the agency, any subsequent protest to the General Accounting Office must be filed within 10 days of actual or constructive knowledge of the initial adverse agency action. Also, section 21.1(b) of our Bid Protest Procedures, 4 C.F.R. § 21.1(b) (1981), requires protests to be addressed to the General Counsel, General Accounting Office, Washington, D.C. 20548.

Therefore, we dismiss the protest, in part as academic and in part as untimely.

Harry R. Van Cleve
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Acting General Counsel