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Comptroller General  
of the United States  
Washington, D.C. 20548

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## Decision

**Matter of:** Brunson Associates, Inc.  
**File:** B-256834.2  
**Date:** October 24, 1994

### DECISION

Brunson Associates, Inc. protests the award of a contract to FKW Incorporated under request for proposals (RFP) No. DACA41-94-R-0012, issued by the Department of the Army for total family housing maintenance at Fort Riley, Kansas. Brunson contends that the RFP (and the resulting contract to FKW) improperly includes provisions relating to wage rate determinations under the Davis-Bacon Act, 40 U.S.C. § 276(a) (1988), for construction work; Brunson contends that the principal purpose of the contract is for maintenance services to be performed by service employees and that, therefore, the Service Contract Act of 1965, 41 U.S.C. § 351 (1988), and its wage rate determinations should instead apply to the contract. We dismiss the protest as untimely filed.

On March 25, 1994, another offeror, Madison Services, Inc., filed a protest with our Office challenging the agency's decision to include provisions in the RFP relating to the Davis-Bacon Act. On August 3, our Office denied the protest. Madison Servs., Inc., B-256834, Aug. 3, 1994, 94-2 CPD ¶ \_\_\_\_\_. By letter dated August 22, after award of the contract to FKW, the Department of Labor advised the agency that, in its view, both the Davis-Bacon Act and the Service Contract Act were applicable to this procurement.<sup>2</sup> Madison filed another protest with our Office on that date again raising this issue, among others. At about the same time, Brunson filed its protest with our Office; Brunson did not challenge the propriety of the Davis-Bacon Act provisions. Subsequently, Madison withdrew its protest. On

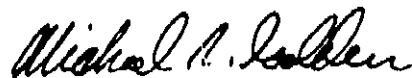
<sup>1</sup>Counsel for Brunson has withdrawn all other protest issues that were previously raised.

<sup>2</sup>The agency has appealed this determination within the Department of Labor; the matter is still unresolved.

October 13, Brunson filed its comments on the agency report and, for the first time, raised the issue of the propriety of the agency including Davis-Bacon Act provisions in the solicitation. Brunson admits that it knew about the facts and circumstances surrounding this issue (including the Department of Labor's August 22 letter) more than 10 working days prior to filing its comments.

Protests based upon other than alleged improprieties in a solicitation must be filed not later than 10 working days after the basis of protest is known, or should have been known. 4 C.F.R. § 21.2(a)(2) (1994). Brunson argues that there are two reasons why our timeliness rules should be waived. First, Brunson states that it reasonably expected this issue to be resolved in Madison's protest. The short answer is that one offeror may not rely on other offerors to assert protest bases which economically affect that offeror. Rather, each offeror must raise pertinent issues in a timely matter to independently satisfy our timeliness requirements. Second, Brunson states that the "flaw in the solicitation is irremedial, and goes to the integrity of the procurement system." Without saying so, the protester is apparently arguing that this issue represents a "significant issue" within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.2(c). We find nothing significant (of widespread interest to the procurement community) in whether a particular solicitation is subject to the Davis-Bacon Act or the Service Contract Act. In any event, the matter is still under consideration by the Department of Labor and the agency which have the primary responsibility in determining the applicability of these provisions.

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel