



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-230222.4

June 10, 1988

The Honorable Mervyn M. Dymally
House of Representatives

Dear Mr. Dymally:

This is in response to your letter of May 12, 1988, to our Office, on behalf of certain unnamed constituents, objecting to the evaluation of offers under request for proposals (RFP) No. F04607-88-R-0010, for mess attendant services at Norton Air Force Base, California.

You question the propriety of using price as the criterion for award of a contract under this solicitation, a basis of evaluation which you state has caused your constituents hardship.

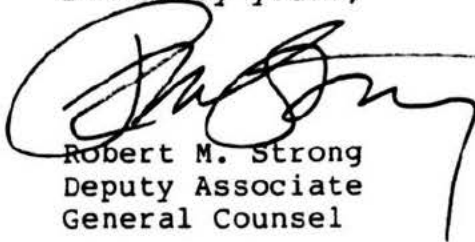
We are unable to render a formal decision on the merits of this matter since your letter has not identified an interested party with eligibility to protest within the meaning of the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(l) (Supp. III 1985), and our implementing Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1988). An interested party for purposes of eligibility to protest is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

Furthermore, a protest objecting to price as the criterion for award is now untimely since it relates to an alleged impropriety which was apparent on the face of the solicitation and which should have been raised prior to the closing date for receipt of proposals, March 21, 1988. Your letter was filed with us almost 2 months later. Our Office does not normally consider untimely grounds of protest, since to do so would defeat the purpose of our Bid Protest Regulations to minimize the possible adverse effects of any delays in the procurement of goods and services needed by the government.

In any event, contracting agencies have broad discretion in determining the criteria under which proposals are to be evaluated. We note that the Federal Acquisition Regulation, 48 C.F.R. § 15.605, requires that price or cost to the government be used as an evaluation factor in every source

selection resulting from a negotiated procurement, and we are aware of no statute or regulation which would prohibit the use of price as the sole criterion for award of a contract resulting from a negotiated procurement. The fact that the Air Force did so in this procurement, therefore, provides no basis for legal objection by our Office.

Sincerely yours,



Robert M. Strong
Deputy Associate
General Counsel