



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

Office of the General Counsel

B-228438.2

December 9, 1987

The Honorable Howell Heflin
United States Senate

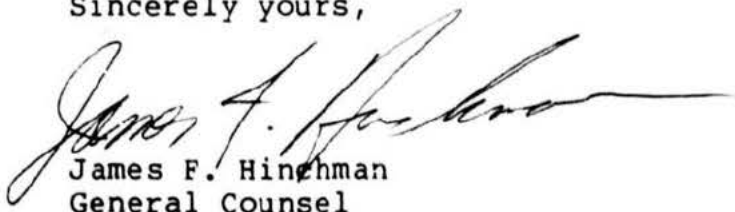
Dear Senator Heflin:

This is in response to your letter of October 22, 1987, regarding a protest filed by John M. Cockerham & Associates, Inc. (B-228438) and dismissed by our Office on October 6, 1987.

Cockerham contended that request for proposals (RFP) No. DAAH01-87-R-0018 issued by the Army contained faulty evaluation criteria and argued that the agency improperly requested a second round of best and final offers. Under our Bid Protest Regulations, allegations concerning improprieties in a solicitation (such as faulty evaluation criteria) must be filed prior to the closing date for receipt of proposals or, if the impropriety is later incorporated into the solicitation (such as an improper request for best and final offers), the allegation must be filed not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1987). Cockerham's protest was not filed until after best and final offers were submitted and evaluated and a tentative award selection made. It was therefore dismissed as untimely.

The purpose of the timeliness requirements in our regulations is to enable our Office to review the matter and take corrective action if warranted--for example, by recommending that the solicitation be amended--when most practicable. See Abbott Products, Inc.--Reconsideration, B-221560.2, Feb. 10, 1986, 86-1 CPD ¶ 144. Our timeliness rules do not permit a firm to compete under a solicitation which it believes to be improper and then protest the solicitation when not awarded the contract. While we appreciate your interest in the matter, it would be inappropriate under these circumstances for us to consider the protest.

Sincerely yours,



James F. Hinchman
General Counsel

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DIGEST

Protest alleging that request for proposals (RFP) contained faulty evaluation criteria and that agency improperly requested a second round of best and final offers filed after best and final offers were submitted and evaluated and a tentative award made is untimely. Under Bid Protest Regulations such allegations must be filed prior to closing date for receipt of proposal, or if the impropriety is later incorporated into RFP not later than the next closing date for receipt of proposals following the incorporation. Under the circumstances, despite it would be inappropriate for GAO to consider the protest.