



**Comptroller General
of the United States**

Washington, D.C. 20548

Subject: Letters to the Air Force and Army concerning Valenzuela
Engineering, Inc. (B-277979, December 9, 1997)

File: B-277979

Date: January 26, 1998



**Comptroller General
of the United States**

Washington, D.C. 20548

B-277979

January 26, 1998

The Honorable F. Whitten Peters
Acting Secretary of the Air Force

Dear Mr. Secretary:

This is to bring to your attention matters that we learned of during consideration of a recent protest. By decision of December 9, 1997, copy enclosed, we dismissed as untimely the protest filed by Valenzuela Engineering, Inc., alleging that the Department of the Air Force and the Army Corps of Engineers failed to comply with certain provisions of the Federal Acquisition Regulation in the acquisition of operation and maintenance services at the Mike O'Callaghan Federal Hospital at Nellis Air Force Base, Nevada. The services were ordered under an indefinite delivery, indefinite quantity (IDIQ) contract between the Army Engineering and Support Center (CEHNC), Huntsville, Alabama, and Syska & Hennessy, Inc.

While we dismissed the protest as untimely, our review indicated that two statutory violations occurred during the procurement. First, the Air Force failed to coordinate with the Small Business Administration (SBA) the removal of this requirement from the small business program and failed to consider this requirement for a possible small business set-aside. These failures violate the Small Business Act, 15 U.S.C. § 644(a) (1994), and implementing regulations. The fact that the purchase was being made through an Economy Act transaction did not exempt the agency from complying with the Act. Second, the statement of work in Syska & Hennessy's Army contract was so broad as to violate the Competition in Contracting Act of 1984 (CICA). Because the Economy Act generally permits agencies to procure services under another agency's contract without full and open competition only where that contract was awarded in compliance with CICA, the Air Force acted improperly in using the Army contract here. We discuss each of these concerns in detail below.

In March 1996, the Air Force entered into a contract for O&M services at the hospital at Nellis Air Force Base through the Small Business Administration (SBA) under the section 8(a) program with Valenzuela. During Valenzuela's

contract performance, CEHNC developed an IDIQ procurement for O&M and incidental repair and replacement services at government facilities, which was determined not suitable for a small business set-aside. On September 24, CEHNC issued a request for proposals (RFP) for the services under IDIQ task order contracts. The RFP's work statement identified no specific facilities or locations at which these services were to be performed, but included O&M and incidental repair and replacement services at "Government facilities such as but not limited to medical, non-medical, training, administrative, plants, labs and storage facilities." These facilities were initially limited by location "in the continental United States, Hawaii and Alaska," but this was subsequently modified to add the words "and outside the continental United States." On May 5, 1997, CEHNC awarded contracts to two large businesses, J&J Maintenance, Inc. and Syska & Hennessy.

Following the award of the Army contracts, the Air Force decided not to exercise the option under Valenzuela's 8(a) contract. Instead, it would satisfy its requirements for O&M services, along with certain additional engineering and construction services, at the Nellis Air Force Base hospital under CEHNC's task order contract with Syska & Hennessy. The Air Force requested the services under a Military Interdepartmental Purchase Request (MIPR) dated May 28. CEHNC issued a delivery order authorizing Syska & Hennessy to develop a plan for performing the services, and on September 12, CEHNC entered into a bilateral modification to the delivery order with Syska & Hennessy to provide the services. The record shows that the bulk of the work will be subcontracted to Johnson Controls, Inc., another large business.

The Air Force did not coordinate with the SBA its decision to remove these services from the small business program, nor did it consider whether the services could be procured under a small business set-aside. We think that these failures were inconsistent with the requirements imposed by the Small Business Act, 15 U.S.C. § 644, and FAR subpart 19, which implements that Act.

FAR §§ 19.501(c) and 19.502-2 state that the contracting officer shall review acquisitions to determine if they can be set aside for small business.¹ Further,

¹The Air Force and the Army argued during the protest that this transaction is not an acquisition, but merely an order pursuant to the Economy Act under an existing contract and that such transactions are not subject to the requirements of the FAR. We think that the Air Force's actions with respect to the Nellis Air Force Base O&M requirement constitute an acquisition as that term is defined in FAR § 2.101, which provides that an acquisition extends from the establishment of the need through the fulfillment of that need by contract. The Air Force established its need for the on-going O&M services and then decided to acquire them under the Economy Act from the CEHNC under the Syska & Hennessy

(continued...)

FAR § 19.202-1 provides that small business concerns "shall be afforded an equitable opportunity to compete for all contracts." FAR § 19.202-1(e)(1)(i) provides that where the proposed acquisition is for services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which make it unlikely that small businesses can compete for the prime contract, the contracting officer shall provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation. The SBA notification requirements in FAR § 19.201(e) implement the same requirements contained in 15 U.S.C. § 644(a).

Economy Act transactions are generally exempted from the competition requirements contained in Competition in Contracting Act of 1984 (CICA) and FAR.² There is no similar exemption from the requirements of the Small Business Act and its implementing regulations.³ Under the circumstances, we agree with the SBA that the Air Force should have notified the SBA of the proposed acquisition for review in accordance with FAR § 19.201(e), inasmuch as a small business concern was performing the Nellis Air Force Base O&M services, and the augmented work (including the additional engineering and construction tasks) was apparently no longer considered suitable for small businesses to perform. In responding to the protest, the Air Force states that the CEHNC approach, which included O&M and the augmented services under one contract, was better suited to satisfy the agency's requirements as well as being more cost effective than initiating a new acquisition process. In our view, this belief provides no basis to exempt the Air Force from complying with the FAR § 19.201(e) requirement that the SBA have the opportunity to review proposed acquisitions to consider whether they should be set aside for small

¹(...continued)

IDIQ contract. Also, transactions under the Economy Act are "acquisitions" where they result in the placement of a "contract." See FAR subpart 17.5 and the definition of "contract" in FAR § 2.101. We think it clear that the delivery order under the IDIQ contract for this stand-alone O&M services work at the Nellis Air Force Base hospital is the "contract" implementing the acquisition.

²10 U.S.C. § 2304(c)(5); Dictaphone Corp., B-244691.2, Nov. 25, 1992, 92-2 CPD ¶ 380 at 3-4. This is so, however, only where the agency receiving the Economy Act order has complied fully with CICA requirements. 10 U.S.C. § 2304(f)(5)(B).

³The Army and the Air Force further argued that this transaction was an "intra-agency" order between two major organizational units of the Department of Defense and thus is not subject to FAR subpart 17.5, which concerns only "inter-agency" Economy Act transactions. However, we find no provision that exempts intra-agency Economy Act acquisitions from those requirements of the FAR that implement the Small Business Act.

businesses or whether the component services should be unbundled into separate procurements. Moreover, under FAR §§ 19.501(c) and 19.502-2, the Air Force should itself have considered whether these requirements were suitable to be set aside for exclusive small business participation.

The Air Force has asserted that it could reasonably rely upon the CEHNC finding that small businesses could not perform the O&M services covered by the IDIQ contracts. We agree with the SBA that this does not exempt the Air Force from its obligations under the FAR because the requirement at Nellis Air Force Base was not contemplated under the solicitation leading to the IDIQ contracts. The CEHNC contracting officer could not have considered whether services at Nellis Air Force Base were suitable for set aside because he did not know of the requirement for those services.

In fact, the SBA believes and the protest record suggests that there are qualified small businesses who could perform the Nellis Air Force Base work, even with the addition of the engineering and construction functions. As noted by the SBA, it appears that the only real differences in approach of the Syska & Hennessy contract from the Valenzuela O&M contract are inclusion of additional functions and the fact that the contractor itself develops the detailed work statement for the work to be performed. The SBA points out that the 8(a) award to Valenzuela was a competitive solicitation that initially contemplated engineering design and construction services that assertedly were removed for reasons unrelated to the capability of small businesses, as well as the O&M services ultimately awarded. There is no dispute that Valenzuela successfully performed the contract work, and Valenzuela notes that it has performed engineering and construction work under other contracts.

Under the circumstances, we believe that the Air Force violated FAR § 19.202-1(e) in failing to apprise the SBA of its planned acquisition strategy and FAR §§ 19.501(c) and 19.502-2 in failing to consider this acquisition as a possible small business set-aside.

As noted in our letter of today to the Secretary of the Army (copy enclosed), we also believe that the Syska & Hennessy IDIQ contract did not comply with the CICA requirement for full and open competition because the work statement, in that contract is so broad that it does not reasonably describe the scope of services needed, and therefore does not provide potential offerors notice of the work that will be within the scope of the resulting contract. Since an agency, such as the Air Force, may not procure property or services from another agency unless that other agency has complied fully with the requirements of CICA in its procurement of such property or services, 10 U.S.C. § 2304(f)(5)(B), we believe that the delivering order under the Army contract also violates CICA.

We are bringing the foregoing matters to your attention for such action as you believe is warranted.

Sincerely yours,

Comptroller General
of the United States

Enclosures (2)



**Comptroller General
of the United States**

Washington, D.C. 20548

B-277979

January 26, 1998

The Honorable Robert M. Walker
Acting Secretary of the Army

Dear Mr. Secretary:

This is to bring to your attention matters that we learned of during consideration of a recent protest. By decision of December 9, 1997, copy enclosed, we dismissed as untimely the protest filed by Valenzuela Engineering, Inc. that the Department of the Air Force and the Army Corps of Engineers failed to comply with certain provisions of the Federal Acquisition Regulation in the acquisition of operation and maintenance services at the Mike O'Callaghan Federal Hospital at Nellis Air Force Base, Nevada. The services were ordered under an indefinite delivery, indefinite quantity (IDIQ) contract between the Army Engineering and Support Center (CEHNC), Huntsville, Alabama, and Syska & Hennessy, Inc.

Although we dismissed the protest, we noted during our review that the work statement included in the Syska & Hennessy IDIQ contract was so broad as to be inconsistent with the authority governing task order contracts contained in 10 U.S.C. §§ 2304a, 2304c (1994) and the requirements of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C §§ 2304(a), 2305(a).

On September 24, 1996, CEHNC issued request for proposals (RFP) No. DACAA87-96-R-0046 to obtain "Operation and Maintenance (O&M) and incidental repair and replacement services for Government facilities." The RFP's work statement identifies no specific facilities or locations at which these services are to be performed. It provided that the services being acquired "will include operation, preventive maintenance, commissioning, management, and incidental repair and replacement of all systems, equipment, and components inherent in Government facilities such as but not limited to medical, non-medical, training, administrative, plants, labs and storage facilities." These facilities were initially limited by location "in the continental United States, Hawaii and Alaska," but this was subsequently modified to add the words "and outside the continental United States." We understand that the solicitation was issued to implement CEHNC's Operations & Maintenance Engineering Enhancement (OMEE) program whose stated goal is to provide for "the enhancement of new and existing complex facilities by developing maintenance concepts and O&M documentation and by identifying O&M training and

maintenance management system requirements . . . [including] O&M contracting support for Army and Air Force activities on a world-wide basis." Contracts were awarded under the RFP to Syska & Hennessy and J&J Maintenance, Inc.

CICA generally requires agencies to obtain full and open competition through the use of competitive procedures in conducting a procurement for property or services. 10 U.S.C § 2304(a)(1). To implement this requirement, CICA requires agencies to specify their needs and develop specifications in a manner designed to achieve full and open competition. 10 U.S.C § 2305(a). Consistent with the CICA requirements, 10 U.S.C § 2304a(b)(3) requires solicitations for task or delivery order contracts to include a "statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract." The implementing regulatory provision, FAR § 16.504(a)(4)(iii), requires a solicitation for task or delivery order contracts to "[i]nclude a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer."

The language in 10 U.S.C § 2304a(b)(3) quoted above reflects congressional concern that "indiscriminate use of task order contracts for broad categories of ill-defined services unnecessarily diminishes competition and results in the waste of taxpayer dollars." S. Rep. No. 103-258, at 15 (1994). Statements of work that are too general provide insufficient information for prospective offerors to decide whether to submit a proposal or what to offer to best meet the agency's needs. Also, inclusion of broad categories of work in one statement of work constitutes a form of bundling, since different kinds of work (or tasks in different geographical or technical areas) are combined into one procurement, and an overly broad statement of work can unjustifiably diminish competition just as bundling does, by deterring businesses, particularly small businesses, from competing for a contract, notwithstanding their ability to perform some of the work at issue. See National Customer Eng'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225; Airport Markings of Am., Inc., et al., 69 Comp. Gen. 511 (1990), 90-1 CPD ¶ 543. Provisions or conditions that restrict competition (such as bundling) are permitted only to the extent necessary to satisfy the contracting agency's needs. 10 U.S.C. 2305(a)(1)(B)(ii); National Customer Eng'g, *supra*.

In our view, the work statement in the Army contracts at issue here is so vague and broad as to violate the statutory and regulatory limits set out above. As described earlier, the work statement in the contracts awarded to Syska & Hennessy and J&J Maintenance encompasses operation of "Government facilities" located either inside or outside the United States, *i.e.*, anywhere in the world. In addition to the unlimited geographical coverage, the statement of work was not limited to any particular facilities or categories of government

facilities. A statement of work for O&M services at any government facility in the world is, in our opinion, impermissibly broad. In addition, it is not clear how inclusion of O&M services for government-wide facilities worldwide, including facilities belonging to agencies other than the Army, is sufficient to allow offerors to make an intelligent decision whether to submit a proposal or is necessary to satisfy the actual needs of the Army.

We view the events of this case as demonstrating one of the problems associated with overbroad work statements. The Air Force used one of the two contracts to acquire O&M services for a hospital at Nellis Air Force Base, Nevada, thus displacing a small business which had been performing that work under the section 8(a) program. Neither that small business nor the Small Business Administration could have been expected to realize, when the Army's task order solicitation was issued, that the resulting contracts might eventually include the Nellis Air Force work and thus lead to the displacement of the 8(a) contractor. Indeed, in our view, no potential offeror could reasonably have anticipated, when the task order contracts were initially being competed, what specific facilities and services would be actually provided under the contracts.

In sum, we conclude that the all-encompassing work statement contained in the IDIQ contracts does not reasonably describe the scope of the services, and therefore does not provide potential offerors notice of the work that will be within the scope of the resulting contract. As a result, we think that the solicitation does not comport with the CICA requirements to obtain full and open competition in procuring property and services.

We bring this matter to your attention for such action as you deem appropriate.⁴

Sincerely yours,

Comptroller General
of the United States

Enclosures (2)

⁴In addition, we are bringing the Air Force's actions in this matter to the attention of the Acting Secretary of the Air Force by letter of today (copy enclosed).



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Valenzuela Engineering, Inc.

File: B-277979

Date: December 9, 1997

DECISION

Valenzuela protests the failure of the Department of the Air Force and the Army Corps of Engineers to comply with certain provisions of the Federal Acquisition Regulations (FAR) pertaining to small business issues in the acquisition of operation and maintenance (O&M) services at the Mike O'Callaghan Federal Hospital at Nellis Air Force Base, Nevada. The services were ordered under an indefinite delivery, indefinite quantity (IDIQ) contract of the Army Engineering and Support Center (CEHNC), Huntsville, Alabama, with Syska & Hennessy, Inc.

We dismiss the protest.

In March 1996, the Air Force entered into a contract for operations and maintenance services at the Nellis Air Force Base hospital through the Small Business Administration (SBA) under the section 8(a) program with Valenzuela for a base year with 4 option years.⁵ The Air Force initially contemplated certain engineering and construction tasks as part of Valenzuela's O&M contract, but deleted these requirements prior to the award assertedly for reasons unrelated to the capability of small businesses.

While Valenzuela was performing the base contract at Nellis Air Force Base, CEHNC developed an IDIQ procurement for O&M and incidental repair and replacement services at medical and nonmedical facilities under its Operation and Maintenance Engineering Enhancement (OMEE) program. According to the Army, OMEE provides for "the enhancement of new and existing complex facilities by developing maintenance concepts and O&M documentation and by identifying O&M training and maintenance management system requirements . . . [including] O&M contracting support for Army and Air Force activities on a world-wide basis." Since

⁵Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes SBA to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns.

the OMEE primarily involved O&M services at medical facilities, the acquisition plan anticipated that such facilities would be the primary user of the services to be acquired under this procurement, but noted that there was good potential for the increased use of these services by non-medical government facilities.

Based on its experience under the OMEE program, which involved O&M services at "complex" facilities, CEHNC determined that the procurement was not suitable for a small business set-aside. CEHNC did not conduct a formal market survey or consult the SBA, but after discussing the matter with the agency's Small Business Utilization Specialist found that the agency's "experience of the market is that there is no small business which can provide the service."

On September 24, 1996, CEHNC issued request for proposals (RFP) No. DACA87-96-R-0046 under an IDIQ task order contract for a base year with 4 option years. The RFP's work statement identifies no specific facilities or locations at which these services are to be performed, but includes O&M and incidental repair and replacement services at "Government facilities such as but not limited to medical, non-medical, training, administrative, plants, labs and storage facilities . . . in the continental United States, Hawaii and Alaska."⁶ The RFP contemplated an award of no more than two contracts, and each awardee would receive "fair consideration" in the issuance of task orders. The task orders are to be issued on either a firm, fixed-price or a time and materials basis. For each task order, the contractor is required to develop a facility operation and maintenance concept plan, a facility operation and maintenance plan, and a commissioning plan prior to implementing the order.⁷

⁶The Nellis Air Force Base hospital was not specifically identified in the RFP and the Army had not considered the facility in preparing the procurement. In this regard, CEHNC states that "[i]t was unaware at the time of RFP issuance or award that the Air Force would be using the contract at Nellis Air Force Base; CEHNC did not formally learn of the Nellis requirement until May 9, 1997."

⁷According to the Army, this was a new process developed by CEHNC to more efficiently meet its operations and maintenance and engineering enhancement program needs. In the first step, the concept of operation is developed, in the second step a detailed facility operation and maintenance plan is developed, which takes the place of the traditional performance work statement, and the third step where performance of the O&M services in accordance with the plan takes place. The approach contemplated a partnership between the government and the contractor, that could result in cost savings and improved services.

CEHNC received three proposals in response to the RFP on April 3, 1997. Neither Valenzuela nor any other small business responded to the RFP. On May 5, CEHNC made awards to J&J Maintenance, Inc. and to Syska & Hennessy. Each contract has a ceiling amount of \$2,650,000 for the base year.

Following award of the Army contracts, the Air Force decided not to exercise the option under Valenzuela's 8(a) contract. Instead, it would satisfy its requirements for O&M services along with certain additional engineering and construction services under the OMEE program at Nellis Air Force Base through CEHNC's task order contract with Syska & Hennessy. There is no suggestion that Valenzuela had not been successfully performing the required O&M services at Nellis Air Force Base. The Air Force did not coordinate this decision with the SBA or consider whether the revised requirement was appropriate for a small business set-aside.

On May 9, the Air Force requested CEHNC to administer O&M services at the Nellis Air Force Base hospital under its task order contract. Pursuant to the Economy Act, 31 U.S.C. § 1535 (1994), the Air Force requested the services under a Military Interdepartmental Purchase Request dated May 28, which authorized the transfer of Air Force funds in the amount of \$40,000 for this purpose. On June 19, CEHNC issued delivery order No. 0002 at a price of \$38,385 under its IDIQ contract with Syska & Hennessy to provide a facility operation and maintenance plan for O&M services at the Nellis Air Force Base hospital. On September 12, CEHNC entered into a bilateral modification to the delivery order with Syska & Hennessy, implementing the plan for the O&M services for 1 year (October 1, 1997 to September 30, 1998) at a cost of \$1,711,153. The record shows that the bulk of the work will be subcontracted to Johnson Controls, Inc., another large business.

Meanwhile, the Air Force, in a letter dated May 30, notified Valenzuela that the Air Force did not intend to exercise the option under its contract effective October 1. During June, Valenzuela met with the SBA procurement center representative and Air Force officials regarding the decision not to exercise its contract option and how the O&M services would be performed. According to Valenzuela, the SBA advised that it was unaware of the May 30 notice, and the Air Force indicated that the matter would be reviewed and that the June delivery order to Syska & Hennessy was only for "scoping and planning". The SBA also sent a letter to the Air Force dated June 6 to inquire why the Air Force was removing its O&M requirement at Nellis Air Force Base from the 8(a) program. While awaiting a response, Valenzuela communicated with various Air Force, Army, and SBA officials contending that its contract option should have been exercised and that these services should not be removed from the small business program.

On August 12, the Air Force Small Disadvantaged Utilization Specialist sent a letter to Valenzuela advising that the Air Force believed that acquiring the services under CEHNC's contract would be more beneficial than continuing performance with Valenzuela, and that Valenzuela should contact the Army for subcontracting

opportunities at the Nellis Air Force Base facility. The Air Force also sent a letter to the SBA dated August 29, stating that the Air Force's 8(a) O&M contract with Valenzuela did not provide the services needed to meet its requirements. The Air Force notified Valenzuela on August 28 to begin transition to the new contractor on September 1. After the SBA furnished the letter it received from the Air Force to Valenzuela on September 4, this protest followed on September 8.

Valenzuela contends that the Air Force and the Army's actions resulted in the improper withdrawal of the Nellis Air Force Base hospital O&M work from the 8(a) and small business programs in violation of various FAR provisions. Among other things, Valenzuela argues that under the FAR the Air Force was required to notify the SBA prior to determining to fulfill its requirement under a task order contract and to review the acquisition to determine whether or not it could be set aside for small business concerns. Valenzuela asserts that it has successfully performed the O&M services and it has performed engineering, design, construction, and O&M services under a variety of contracts with the government throughout California, Arizona, and Nevada.

The Air Force, Army, and Syska & Hennessy argue that the protest should be dismissed as untimely because Valenzuela should have known of its basis of protest in June following the Air Force's May 30 notification to Valenzuela that it would not exercise the contract option and the Army's June 19 issuance of the delivery order to Syska & Hennessy. Valenzuela responds that when it inquired about the matter it was told that the initial delivery order to Syska & Hennessy was merely for planning and that the agencies were still reviewing the matter to determine whether they would proceed with acquiring the work from CEHNC under the Economy Act. Valenzuela states that until it received a copy of the August 29 letter to the SBA and was advised to begin transition for a new contractor it had no basis for protest.

Under our Bid Protest Regulations, a protest not based upon alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew or should have known of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1997). The agencies argue that the Air Force had conveyed its intent to follow a course of action that was adverse to the protester's interest on May 30 and June 19, which required the protest to be filed within 10 days afterwards. *See, e.g., Kimmins Thermal Corp.-Recon.*, B-238646.4, Jan. 31, 1991, 91-1 CPD ¶ 106 at 2.

While the record contains some basis to find that Valenzuela believed during June and July that the matter was still under consideration, as discussed above, the Air Force clearly stated to Valenzuela that it intended to proceed with acquiring the services at Nellis Air Force Base from Syska & Hennessy in an August 12 letter.⁸ Thus, we find that the protest filed on September 8, almost a month later, was untimely.

The protester argues that even if the protest is untimely, we should consider the issues raised as significant to the procurement system and entertain the protest pursuant to 4 C.F.R. § 21.2(c), which provides discretion for our Office to waive timeliness requirements in certain cases. We decline to do so.⁹ We note that had the protest been considered under 4 C.F.R. § 21.2(c) and been sustained, we would not have recommended any remedial action in view of the advanced state of contract performance and the untimeliness of the protest. See Golden North Van Lines, Inc., 69 Comp. Gen 610, 615, 90-2 CPD ¶ 44 at 7.

The protest is dismissed.

Comptroller General
of the United States

⁸In the absence of evidence to the contrary, we assume that mail is received within 1 calendar week from the date that it was sent. Apex Micrographics, Inc., B-235811, Aug. 31, 1989, 89-2 CPD ¶ 205 at 3. The protester therefore would be charged with receipt of this letter on August 19 and its September 8 protest is untimely because it was filed more than 10 days later. Id.

⁹We do have concerns related to the actions challenged in this case, and are writing the Secretary of the Army and the Secretary of the Air Force to bring our concerns to their attention.