

DECISION



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

9814 97/63

FILE: B-183288

DATE: June 23, 1975

MATTER OF: Hewlett-Packard Company

DIGEST:

Where offeror submitted initial basic proposal conforming to RFP and initial alternate proposals taking exception to RFP requirement, protest filed after rejection of alternate proposals--seeking amendment of RFP to eliminate stated requirement--is untimely, because protests against apparent improprieties in RFP must be filed prior to closing date for receipt of initial proposals.

Hewlett-Packard Company (H-P) protested to our Office on May 23, 1975, against a requirement for "two work stations per system" as set forth in the Scope of Work of request for proposals (RFP) No. DAAH01-74-R-0877, issued by the United States Army Missile Command, Redstone Arsenal, Alabama. The RFP called for five Laboratory Automated Calibration Systems (LACS) to provide computerized calibration for electronic equipment. No award has been made.

For the reasons which follow, we find the protest to be untimely.

A chronology of pertinent dates follows:

December 6, 1974: Closing date for receipt of initial proposals. H-P submits a basic proposal and three alternate proposals. Several other offerors submit proposals.

February 12, 1975: H-P sends the following message to the contracting officer:

"HEWLETT PACKARD FEELS THAT THE LACS PROCUREMENT DISCRIMINATES AGAINST COMPETITION BY REQUIRING TWO WORK STATIONS AT EACH LABORATORY. INFORMATION AVAILABLE ON ACTUAL WORKLOADS INDICATES A REQUIREMENT FOR ONLY ONE WORK STATION AT SEVERAL SITES AND FOR MORE THAN TWO AT OTHERS.

PUBLISHED DECISION
54 Comp. Gen. _____

"HP'S ALTERNATIVE PROPOSALS IN ITS DEC. 6 LACS RESPONSE SHOWED HOW ACTUAL WORKLOAD AT EACH LAB COULD BE HANDLED AT FAR LOWER COST BY SINGLE WORK STATION SYSTEMS. WE UNDERSTAND THESE ALTERNATIVES ARE CONSIDERED NON-RESPONSIVE TO THE LETTER OF THE RFP.

"HP THEREFORE REQUESTS THAT THE LACS RFP BE AMENDED TO ELIMINATE THE REQUIREMENT FOR TWO WORK STATIONS PER SYSTEM AND TO BASE SELECTION CRITERIA ON THE ABILITY OF EACH PROPOSALS TO HANDLE THE ACTUAL WORKLOADS AT EACH LABORATORY. HP REQUESTS THIS AMENDMENT IN ORDER TO PERMIT THE LACS PROCUREMENT TO BE TRULY COMPETITIVE AND TO MINIMIZE OVERALL PROGRAM COST."

- February 14, 1975: The contracting officer by letter to H-P denies the request that the RFP be amended, stating that the two-station requirement is based upon an analysis conducted by the Army Metrology and Calibration Center (AMCC), which is of the firm opinion that two work stations are required.
- March 11, 1975: An H-P message again requests amendment of the RFP and requests a copy of the AMCC analysis supporting the two-station requirement.
- March 28, 1975: Closing date for receipt of best and final offers.
- April 1, 1975: The contracting officer's letter to H-P affirms the Army's refusal to amend the RFP and advises that the AMCC analysis could be obtained by request under the Freedom of Information Act.
- April 7, 1975: H-P requests the AMCC analysis under the Freedom of Information Act.
- May 15, 1975: H-P receives the AMCC analysis, allegedly after the close of its business day.
- May 23, 1975: H-P files its notice of protest with GAO.

May 29, 1975: The statement of the specific grounds of H-P's protest is received at GAO.

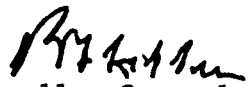
In its detailed statement of protest, H-P contends that the two-work-station requirement arbitrarily restricts competition and "* * * assures selection of one supplier whose equipment most closely approximates the specification * * *." H-P further alleges that the AMCC analysis was the sole ground for the refusal to amend the RFP. The protester indicates that it did not know the basis for protest until it received the AMCC analysis on May 15, 1975. H-P contends in some detail that the analysis contains errors in two key areas. H-P therefore requests that the RFP be amended to eliminate the multistation approach and to allow one work station, or, alternatively, that the RFP be canceled.

We note that H-P's above-quoted February 12, 1975, message to the contracting officer specifically makes reference to the fact that the H-P alternate offers varied from the two-station requirement; that they were considered by the Army to be nonresponsive; and that H-P therefore is requesting that the two-station requirement be eliminated. We further note that the February 12 message does not explicitly protest against the Army's rejection of the H-P alternate offers. Rather, it indicates that amendment of the RFP is necessary in order to have a truly competitive environment. Thus, it appears that H-P as of February 12, 1975, was contending that one of the premises of the competition among itself and the other offerors--namely, the two-station requirement--should be changed. H-P had apparently indicated compliance with this requirement in its initial basic offer.

Protests against apparent improprieties in an RFP must be filed prior to the closing date for receipt of proposals. See 4 C.F.R. § 20.2(a) (1974). Where the impropriety is apparent in the RFP as originally issued, we believe the "closing date" must be properly taken as referring to the closing date for receipt of initial proposals. See, in this regard, BDM Services Company, B-180245, May 9, 1974, and Salvat & Company, B-181721, August 20, 1974. The apparent nature of the alleged impropriety in the present case is evident from the fact that H-P submitted alternate proposals showing, in its words, "* * * how actual workload * * * could be handled at far lower cost by single work station systems." Under the circumstances, a protest filed after the initial closing date, which is directed at attempting to amend the RFP so as to

B-183288

change the competitive premises upon which the protester's basic proposal was submitted, must be regarded as untimely and not for consideration.


Acting Comptroller General
of the United States