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DECISION

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

FILE: B-200736

DATE: June 30, 1981

MATTER OF: Maryland Machine Tool Sales

DIGEST:

1. Protest against rejection of proposal as technically unacceptable is denied where protester has not shown that rejection was unreasonable.
2. Allegations that solicitation should have required equipment designed only in metric system rather than permitting both metric and nonmetric equipment and that solicitation contained improper technical specifications are untimely since protest was not filed until after closing date set for receipt of proposals. See 4 C.F.R. § 20.2(b)(1) (1980).
3. Allegation of possible criminal misconduct in awards of prior contracts for engine lathes is for consideration by appropriate criminal law enforcement agencies and not GAO.

Maryland Machine Tool Sales (MMTS) protests the rejection of its offer under request for proposals (RFP) No. N00600-80-R-5443, issued by the Naval Regional Contracting Office (Navy), Washington, D.C., for two manual engine lathes.

MMTS contends that it submitted the low acceptable proposal and that the procuring activity acted improperly in rejecting its proposal as technically unacceptable. The protester appears to be of the view that its lathes meet the Navy's minimum requirements but that they were rejected because they are designed in the metric system of measurement. MMTS also argues that the RFP should have required the submission of

[Protest of Proposal Rejection as Technically Unacceptable]

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engine lathes designed only in the metric system in accordance with Department of Defense (DOD) Directive Number 4120.18, December 10, 1976, which establishes policies for the use of the metric system within the DOD.

Based upon our review of the record, the protest is denied.

The Navy reports that, although:

"certain dimensions in the specifications [of the RFP] were stated in the English measurement system, products offered in metric equivalents would be considered for award provided all other requirements of the specifications had been met."

The Navy further reports that MMTS and three other offerors submitted proposals for the fixed-price contract to be awarded for the lathes.

MMTS's proposed prices were subject to a condition that if the lathes, referred to by MMTS as "stock items," were sold to another customer prior to delivery to the Navy, the price for each would have to be increased by \$7,000. To the extent that MMTS's proposed prices could only be considered firm and fixed by reflecting this contingency, MMTS's prices for comparison purposes--including the prices for required testing which MMTS separately priced--were higher than those of the ultimate awardee, Canadian Commercial Corporation (CCC), as well as those proposed by American Machine Tool Company.

The proposals were evaluated for compliance with technical requirements. The dimensions of MMTS's lathes, calibrated in the metric system, were converted into English measure equivalents and evaluated in comparison with the requirements of the specifications. The Navy reports that the lathes were determined to be technically unacceptable, "primarily due to the insufficient number of feed and thread selections * * * and the failure of the equipment to comply with the specified feed range." In this connection, the Navy has furnished us with an analysis (in the English system) of the "offered

capacity" of MMTS's lathes and the RFP-required capacity, which reads as follows:

<u>"Characteristic</u>	<u>Required Capacity</u>	<u>Offered Capacity</u>
Number of Feed and Thread selections	48	40
Feed Range, IPR, Cross and Longitudinal	.0037 - .062	cross .0023 - .049 Longit. .00118 - .025
Tailstock spindle Diameter, inches	2-3/8	2-5/16
Tailstock spindle Travel, Inches	5	4-11/16"

Because of this analysis, and since MMTS was offering a stock item which was not subject to design modification, the contracting officer concluded that the "lathes could not feasibly be made acceptable by negotiations" and rejected the MMTS offer from further consideration for award. The offer of the low offeror, American Machine Tool Company, was also found to be technically unacceptable. The third low offer, which was from CCC, was found "totally conforming to the requirements." Thereafter, the Navy made an award to CCC on the basis of the company's initial proposal without discussions with CCC or the fourth low offeror.

In reply to the above technical analysis, MMTS suggests that the Navy is engaged in technical nit-picking and that the above characteristics of MMTS's lathes satisfy the Navy's actual needs.

It is not our function to evaluate the proposals submitted and make our own determinations as to their acceptability or relative merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. Thus, we have repeatedly stated that we will not disturb the agency's technical evaluation unless it is clearly shown to be without a reasonable basis. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. These principles are applicable to review

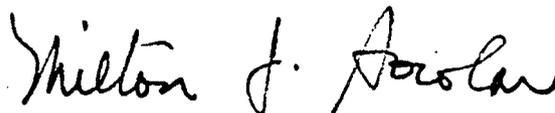
of a decision which excludes an offeror, as here, from the competitive range of a procurement.

Considering the above analysis of MMTS's technical proposal and MMTS's comments, we cannot conclude that the company has shown the Navy's rejection of its proposal to be unreasonable; further, we see no evidence in the record to justify MMTS's allegation that its proposal was excluded because its proposed equipment is metric based. To the extent, moreover, that MMTS's allegation of nitpicking questions the validity of the specified characteristics, which were set forth in the RFP, we must reject this part of the protest as untimely since it was not filed with our Office until after the closing date set for receipt of proposals. See 4 C.F.R. § 20.2(b)(1) (1980).

MMTS next suggests that the RFP improperly permitted both English and metric equipment in violation of the above DOD Directive which MMTS views as permitting only metric equipment. This allegation also relates to an apparent solicitation defect which was not made the subject of a protest until after the closing date for receipt of proposals. Consequently, we may not consider this part of the protest. See 4 C.F.R. § 20.2(b)(1), above.

Finally, MMTS suggests that awards of prior contracts for similar equipment may have involved criminal misconduct. The company should bring this allegation to the attention of agencies which have criminal law enforcement responsibilities, not our Office which does not have this responsibility.

Accordingly, the protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States