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DECISION



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

FILE: B-206317

DATE: February 22, 1982

MATTER OF: The 3M Company

DIGEST:

Late modification of a proposal for a multiple award Federal Supply Schedule contract that adds items not included in original proposal is properly rejected under the late proposal clause as the late modification does not modify an otherwise successful proposal to make its terms more favorable to the Government.

The 3M Company protests the General Services Administration's (GSA) refusal to accept a modification (submitted two months after the closing date for the receipt of proposals) to its offer under request for proposals (RFP) No. FCGE-B2-75202-N-9-28-81. The RFP solicited offers for multiple award Federal Supply Schedule (FSS) contracts to supply the certain photographic supplies. The RFP contained the standard late proposal clause which provides that any proposal or modification received after the exact time specified for the receipt of proposals will not be considered except under certain circumstances not present here. We summarily deny the protest.

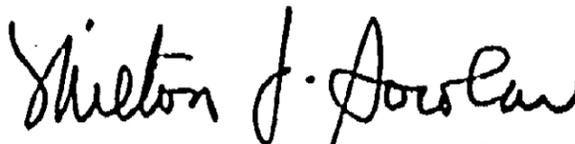
The protester alleges that it inadvertently omitted an offer for two items under the RFP. 3M believes GSA can accept its late modification under the portion of the late proposal clause which permits the Government to accept "a late modification of an otherwise successful proposal which makes its terms more favorable to the Government." Although 3M acknowledges its offer is not yet an "otherwise successful proposal", it argues that given "the nature" of the multiple-award program, all proposals submitted are "qualified under that definition [of multiple-award] as long as an award ultimately is made to such a bidder." The company also believes that its offer could properly be considered a "successful proposal" insofar as its pricing and terms are more favorable than those of its competitors under the existing contract.

An "otherwise successful" proposal is one that as timely submitted is eligible for award. Such a proposal is not "otherwise successful" for those items which were not included in the original timely submitted proposal. In other words, a late modification which adds items not originally offered cannot be considered under the "otherwise successful" proposal exception. See Texas Trunk Company, Inc., B-198645, August 4, 1980, 80-2 CPD 83. Obviously, a proposal cannot be considered otherwise successful in relation to an existing contract as 3M asserts, if the late proposal rules are to have any meaning whatsoever, since these rules relate only to the competition on hand.

Prior to the time GSA adopted the policy of imposing the standard late proposal rules to its multiple award FSS contract solicitations, late proposals could be accepted. With the advent of the current policy, however, the contracting officer is required to reject late proposals. Any problem a party has with the application of the standard late proposal rules to solicitations for multiple award FSS solicitations should be brought to the agency's attention prior to the closing date for the receipt of proposals. That is so because our Bid Protest Procedures require that any protest based upon improprieties apparent in a solicitation prior to the closing date for the receipt of proposals must be filed before the closing date. See Rally Enterprises, B-200159, September 18, 1980, 80-2 CPD 208, affirmed Rally Racks, Division of Rally Enterprises, Inc., --Reconsideration, B-200159.2, October 30, 1980, 80-2 CPD 330.

3M did not timely protest the RFP's late proposal rules, and those rules apply to the procurement. Under these rules, the contracting officer properly rejected the modification.

The protest is summarily denied.

for 
Comptroller General
of the United States