

118493 *W. C. King*

DECISION



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

FILE: B-207321

DATE: May 27, 1982

MATTER OF: Paulmar, Inc.

DIGEST:

1. Protest of an agency's issuing a solicitation on a sole-source basis and its failure to solicit protester's alternative item filed after the closing date for receipt of proposals is dismissed as untimely where solicitation was synopsised in Commerce Business Daily prior to the closing date for receipt of proposals.
2. Late proposal was properly rejected where proposal does not meet any of the circumstances listed in the RFP for the consideration of late offers.

Paulmar, Inc. protests the Air Force's sole-source procurement of film inspection devices under request for proposals (RFP) No. M95450-1-16072. Paulmar asserts that a sole-source procurement is not justified because it also manufactures film inspection equipment. Paulmar also believes the agency's refusal to consider its late offer was improper. We summarily deny the protest in part and dismiss it in part.

Paulmar's protest over the sole-source justification will not be considered because it is untimely since it was not filed prior to the closing date for the receipt of proposals as required by our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(1) (1981). Paulmar's submission clearly indicates that it had actual knowledge of the intended sole-source acquisition prior to the date for receipt of proposals from a synopsis of the procurement published in the Commerce Business Daily. In any event, even if Paulmar did not have actual knowledge of the solicitation, we note

that publication of a procurement synopsis in the Commerce Business Daily constitutes constructive notice of the solicitation and its contents, Micro-Mil, Inc., B-202703, May 1, 1981, 81-1 CPD 335. Since the sole-source nature of the procurement therefore was apparent prior to the closing date for receipt of proposals, we dismiss this portion of Paulmar's protest filed after that date as untimely.

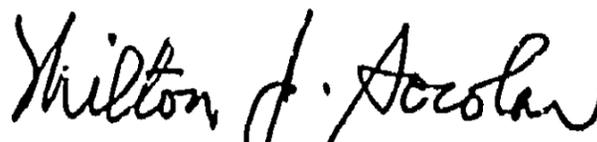
Paulmar admits responsibility for submitting its proposal late--that is after the date specified in the RFP for the receipt of proposals. It contends, however, that the Air Force has discretion to accept a late proposal under extenuating circumstances, and that such circumstances exist here since its proposal affords a significant cost savings to the Government in comparison to the specified source's offer.

The RFP contained the standard clauses stipulating that a proposal received after the date for receipt of proposals listed in the RFP would not be considered unless 1) it had been sent by registered or certified mail not later than the fifth calendar day prior to the date for receipt of proposals, or 2) it was sent by mail or telegram (if authorized) and the Government determines that the late receipt was due solely to mishandling by the Government after receipt at the Government installation, or 3) it was the only proposal received. Defense Acquisition Regulation § 7-2002.4 (1976 ed.). Our Office consistently has held that an offeror has the responsibility to assure timely submission of its offer, and a late proposal cannot be accepted unless the specific exceptions in the solicitation are met. International Technologies, Inc., B-203216, May 29, 1981, 81-1 CPD 427. In other words, those specific exceptions are the only "extenuating circumstances" under which late proposals may be considered. Since Paulmar's late offer does not meet any of the exceptions listed in the RFP the offer must be rejected. See Federal Sales Service, Inc., 58 Comp. Gen. 656 (1979), 79-2 CPD 36.

Thus, while the agency would have been required to consider the proposal if it had been submitted on time

despite the sole-source nature of the procurement, it acted properly by rejecting the late proposal. In other words, while a late unsolicited proposal always may be considered for the limited purpose of ascertaining whether or not the Government's requirements can be met only through a sole-source purchase, TM Systems, Inc., 56 Comp. Gen. 300 (1977), 77-1 CPD 61, an agency may not evaluate a late unsolicited proposal for award in a sole-source procurement. Although Paulmar's late offer may be more cost advantageous to the Government, the paramount consideration in applying the late proposal rules is to maintain confidence in the integrity of the Government procurement system rather than the possible cost savings to be gained in a particular procurement, Federal Sales Service, Inc., supra. The acceptance of a late proposal raises an implication that offerors were created unequally, which must be avoided. Therefore, we summarily deny Paulmar's protest that the Air Force refused to consider its late offer.

The protest is dismissed in part and summarily denied in part.

for 
Comptroller General
of the United States