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DECISION



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

FILE: B-216990 **DATE:** February 12, 1985
MATTER OF: Maryland Computer Services, Inc.

DIGEST:

1. Where adequate competition and reasonable prices are obtained by the government, an offeror bears the risk of nonreceipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude an offeror from participating in the procurement.
2. Where a protester does not submit any evidentiary support for its bare assertion that specifications are "written around" a competitor's product, the protester fails to meet its burden of proof.

Maryland Computer Services, Inc. (MCS), protests the award of a contract under request for proposals (RFP) No. IRS-84-0111, issued by the Internal Revenue Service (IRS), Department of the Treasury, for peripheral computer equipment with speech capability ("talking terminal attachments") to aid the job performance of visually handicapped federal employees. MCS contends that the solicitation's initial closing date allowed only 15 working days for preparation of proposals, which the protester considers to be an unreasonably short time period. MCS also alleges that the solicitation's specifications are restrictive inasmuch as they are "written around" a particular vendor to the exclusion of other interested suppliers. We deny the protest.

First, the record shows that the initial closing date was in fact extended from November 2 to November 16, 1984, by two separate amendments and that offerors had a total of 35 working days to submit their proposals. Despite the fact that both amendments clarified technical matters raised by the offerors, including a letter from MCS dated October 24, MCS states that it never received notice of

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the extension of the closing date. Both amendments, however, clearly set forth revised closing dates on the front page.

We cannot determine with any certainty, on the basis of this record, what occurred here. If MCS received the amendments and simply overlooked its provisions concerning extension of the closing date, the responsibility for its lack of notification rests with the protester. However, even if we assume that MCS never received the amendments, we must still deny this basis for protest. In the case of formally advertised procurements, we have consistently held that the propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained by the government and not upon whether a particular bidder was given an opportunity to bid. The bidder bears the risk of nonreceipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude a bidder from participating in the procurement. Native Plants, Inc., B-195481, Jan. 11, 1980, 80-1 CPD ¶ 35; E&I Inc., B-195445, Oct. 29, 1979, 79-2 CPD ¶ 305; A. Brindis Company, Inc., B-187041, Dec. 9, 1976, 76-2 CPD 477; 52 Comp. Gen. 281 (1972).

MCS does not allege and the record does not indicate that the IRS deliberately failed to send the amendments to MCS or that adequate competition and reasonable prices were not obtained (IRS received three proposals). These principles are equally applicable to negotiated procurements. CompuServe, B-192905, Jan. 30, 1979, 79-1 CPD ¶ 63; Polytech, Inc., B-199770, Jan. 7, 1981, 81-1 CPD ¶ 14. Accordingly, this basis for protest is denied.

Second, MCS also believes that certain solicitation specifications are restrictive and favor a particular vendor, apparently the manufacturer of the "Vert 6000." In this regard, MCS lists certain features required by the specifications (e.g., interfacing, rate control, cursor control and other operational requirements) which, according to MCS, indicate that the specifications are "product specific." MCS's protest regarding this matter must fail for the following three reasons. First, IRS in fact received no offers proposing a "Vert 6000." Second, the IRS states, and MCS has not denied, that MCS's own "information thru speech computer system" either fully complies

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with all solicitation specifications or may be easily modified with minimal effort to so comply. Third, except for its bare assertions, the protester has not submitted any support for its contention that the specifications are unduly restrictive. It is well established that the protester has the burden of proving its case. International Alliance of Sports Officials, B-211755, Jan. 25, 1984, 84-1 CPD ¶ 117. We believe MCS has failed to meet this burden.

Finally, MCS complains that IRS is procuring "dated" equipment by current standards which is not the best solution for the agency's needs. MCS has again not submitted any evidence, data, or supporting documents to substantiate its allegations. Thus, the protester has also failed to meet its burden of affirmatively proving its case with respect to this issue. See Ingersoll-Rand, Company; Sullair Corp., B-207246.2; B-211811, Sept. 28, 1983, 83-2 CPD ¶ 385.

The protest is denied.

for *Simon Efraim*
Comptroller General
of the United States