



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Simmler, Inc.

**File No:** B-233503

**Date:** February 22, 1989

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### DIGEST

1. Protest of the nonreceipt of a solicitation is timely even though filed more than 10 days after the closing date for proposals announced in the Commerce Business Daily where the actual closing date was almost 2 months later and the protester filed its protest within 10 days of the actual closing date.
2. Where the agency's actions resulted in adequate competition and reasonable prices and the record indicates that the protester may have contributed to its exclusion from the solicitation mailing list by failing to submit a required form, protest that the agency improperly excluded the protester from the competition is denied.

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### DECISION

Simmler, Inc., protests that its firm was improperly denied the opportunity to submit an offer under request for proposals (RFP) No. DADA09-88-R-0115, issued by the William Beaumont Army Medical Center for an indefinite quantity of diagnostic reagents and laboratory chemicals for a 1-year base period and two 1-year option periods. The supplies will be used by the Medical Center's Department of Pathology. Simmler contends that, despite repeated assurances, the Army failed to provide it with a copy of the RFP.

We deny the protest.

The procurement was synopsisized in the Commerce Business Daily (CBD) on July 22, 1988, and specified a closing date of September 5. However, the RFP was not actually issued until September 26, with a closing date for receipt of proposals of October 26. The synopsis listed the contracting officer and another individual as agency contacts.

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Simmler alleges that since May 1988, it visited and called the Medical Center's laboratory and contracting personnel to express its interest in participating in the procurement. The protester alleges that in June, the laboratory supervisor advised its firm that the solicitation would be issued in August. The protester states that it was told on August 18 by the laboratory supervisor that its firm was on the vendors list, and by the contracting officer that if the firm was on the vendors list, it would receive a solicitation.

The laboratory supervisor advised Simmler on September 14 that the mailing of the RFPs had been delayed because other items were being added to the solicitation, but that she believed the RFPs would be mailed in 10 days. On October 5, 9 days after the RFP had been issued, Simmler alleges it was advised by the laboratory supervisor that the RFP still had not been issued. Simmler contends that it first learned of the issuance of the RFP on October 28, when it was informed that the Army had inadvertently failed to mail the firm a copy of the solicitation. Simmler filed this protest with our Office on November 7.

The Army argues that Simmler's protest should be dismissed as untimely under our Bid Protest Regulations because it involves an alleged impropriety in the solicitation and thus was required to be filed prior to the October 26 closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). We disagree and find Simmler's protest timely.

Contrary to the Army's assertion, a protest that the contracting agency failed to send the protester a copy of the solicitation generally must be filed within 10 days of the closing date published in the CBD, not before the closing date. See 4 C.F.R. § 21.2(a)(2); Copperweld Southern Division, B-231853, Aug. 2, 1988, 88-2 CPD ¶ 111. In this case, however, we think it illogical to conclude that Simmler's protest had to be filed within 10 days of September 5, the CBD's announced closing date, in order to be timely, since the RFP's actual closing date was October 26, almost 2 months later. Since Simmler's protest was filed on November 7, within 10 days of October 26, we find that the protest is timely. See Rut's Moving & Delivery Services, Inc., B-228406, Feb. 11, 1988, 67 Comp. Gen. \_\_\_\_\_, 88-1 CPD ¶ 139.

The protester contends that it was unfairly excluded from the competition because of the Army's failure to timely furnish it a copy of the RFP. In reviewing the Army's actions in this regard, we look to see whether adequate competition and reasonable prices were obtained and whether

there was a deliberate attempt to exclude the potential offeror. Western Pioneer, Inc., d.b.a. Delta Western, B-220608, Jan. 30, 1986, 86-1 CPD ¶ 109.

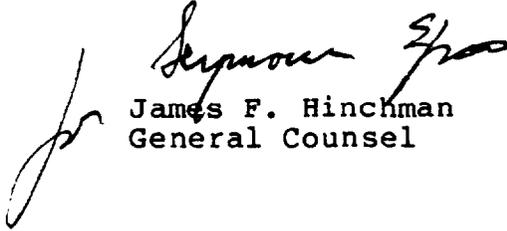
Here, the record indicates that the Army advertised the solicitation in the CBD on July 22, well before the September 26 solicitation issuance date, and mailed solicitations to 46 prospective offerors who either responded to the CBD notice or were listed as suggested sources by the Department of Pathology. The Army allowed the requisite 30 days for receipt of proposals, Federal Acquisition Regulation § 5.203(b), and received 11 offers by the October 26 closing date. In our view, the Army clearly made a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials, and as a result satisfied the requirement for adequate competition. See Braceland Brothers, Inc., B-228312, Dec. 10, 1987, 87-2 CPD ¶ 574.

With respect to price, the Army states that the prices obtained were reasonable. The determination of price reasonableness is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith. Western Pioneer Inc., d.b.a Delta Western, B-220608, supra. There is nothing in the record indicating, and the protester does not contend, that the offered prices are unreasonable, nor is there any showing of fraud or bad faith. We therefore have no basis upon which to question the Army's determination.

Concerning the failure to send a copy of the RFP to the protester, the Army maintains that the agency did not deliberately exclude Simmler from the competition, and states that if the protester wanted to be placed on the solicitation mailing list, the firm should have submitted a standard form (SF) 129, "Solicitation Mailing List," for that purpose. Although Simmler maintains that it took all reasonable steps to obtain a copy of the solicitation, it does not dispute the Army's contention that it failed to submit an SF 129. Additionally, the record indicates that the protester's contacts were primarily with the laboratory supervisor rather than with the contracting officer, who was designated in the CBD notice and the solicitation as the person to contact for information on the procurement. Under the circumstances, we have no basis upon which to conclude that the Army deliberately excluded Simmler from the competition.

Since the record shows that adequate competition and reasonable prices were obtained and there is no indication of any deliberate attempt to exclude the protester, we see no basis to challenge the award under the RFP.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman  
General Counsel