



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: H & S Manufacturing, Inc.

File: B-259888

Date: May 1, 1995

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### DECISION

H & S Manufacturing, Inc. protests the rejection of its proposal under request for proposals (RFP) No. SP0450-94-R-4087, issued by the Defense General Supply Center (DGSC) for Ecotat Systems Co. personal shelter systems (part number 79905) or an equal alternate.

We dismiss the protest.

The RFP was issued on September 16, 1994, after having been advertised in the August 30 Commerce Business Daily. The latter had advised potential offerors that the procurement was being conducted on a sole-source basis with Ecotat (part number 79905) and that interested parties could submit offers for consideration, although the specifications, plans, or drawings for the Ecotat system were not available and could not be furnished by the government. Potential offerors were advised by the RFP that they could submit offers for alternate systems, but that the government may not have sufficient data to permit a determination of whether an alternate system could be considered an equal to the Ecotat system. Potential offerors also were advised by the RFP that the agency did not have a "data package adequate for manufacture" of the Ecotat system. The RFP established October 14 as the closing date for the receipt of initial proposals. H & S' proposal, submitted through a commercial carrier, was received by the agency on October 17 and was, consequently, rejected as late.

H & S contends that the agency's rejection of its proposal as late was improper since it was rejected only because it had been sent by commercial carrier rather than by U.S. Postal Service Express Mail Next Day Service. H & S also contends that the agency had a duty to develop competitive specifications for the procurement and that the agency cannot be permitted to ignore H & S' proposal of an

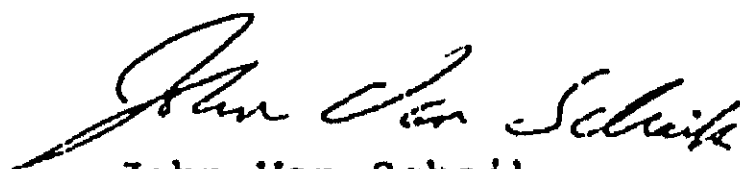
alternate system simply because it does not have sufficient technical information to determine the acceptability of alternate systems. H & S requests that the RFP be canceled and that specifications be developed before it is reissued.

Protests based on alleged improprieties in a RFP which are apparent prior to the closing time for the receipt of initial proposals must be filed prior to the closing time for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1995). Since both bases of the H & S protest should have been filed prior to the closing time for the receipt of initial offers, but were not, the protest is untimely.

H & S argues, in essence, that because Federal Acquisition Regulation (FAR) § 52.215-10, incorporated into the RFP by reference, permitted the acceptance of proposals received after the closing time if sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee within a specified time frame prior to the closing time, the rejection of its late proposal was discriminatory since its proposal was submitted within the same time frame--only by commercial carrier. Thus, H & S is protesting against the fact that the regulation did not apply equally to proposals sent by U.S. mail and by common carriers. Since it was quite clear that the regulation applies only to proposals submitted through the U.S. mail, H & S was required to protest this matter prior to the closing time for receipt of initial proposals.

H & S' contention that the agency failed to provide specifications against which equal systems could be judged also is untimely since this alleged impropriety was clear on the face of the RFP. The RFP did not contain specifications against which alternate systems could be judged; it advised that the agency would not be able to evaluate an alternate if the agency did not have sufficient data on the brand name system being procured; and it advised that the agency did not have an adequate data package for the Ecotat system. To the extent that H & S objected to these solicitation terms, it was required to protest prior to the closing time for receipt of proposal.

The protest is dismissed.



John Van Schaik  
Acting Assistant General Counsel