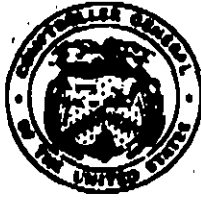


01471



*T. Prybylski
Proc II*

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

FILE: B-136839

DATE: January 24, 1977

MATTER OF: Comspace Corporation

DIGEST:

1. Protest alleging unreasonableness of requirement to provide sample for evaluation within 2 days is not sustained where offerors were on prior notice from terms of RFP that a sample might be required by contracting agency prior to award.
2. Contention that requirement for pre-award sample was improper is untimely raised where solicitation stated that a sample might be required and protester did not object to sample requirement until after its proposal had been submitted and rejected for failure to submit a sample as requested by agency.

Comspace Corporation (Comspace) protests the award by the Department of State (State) of a negotiated contract for home alarm systems. Comspace states that it was permitted only 2 days for the fabrication and testing of a representative unit and that such a period was totally inadequate for it to prepare and furnish any representative unit. It is maintained that such a short period limited competition to those firms currently manufacturing the home alarm unit. The protester also suggests that the sample should have been required as a pre-production model and not a condition of bidding.

Solicitation RFP ST 76-63, which was issued May 14, 1976, stated:

"At the Department of State's option, the manufacturer shall provide a representative unit and technical manual for test and inspection * * * prior to the contract award."

The RFP also stated the agency's desire to enter into a contract prior to June 30, 1976.

On June 21, 1976, 10 proposals were received and then evaluated. It was found that two proposals were technically non-responsive, one proposal nonresponsive because of excessive delivery time, and two proposals nonresponsive because the offerors

A-186839

failed to provide representative units for inspection and testing. The protester was included in this latter category.

On June 28, the submitted units or samples from the remaining five offerors were inspected and tested. On June 29, the agency telephonically requested best and final offers from the technically qualified offerors that were determined to be within the competitive range and at the same time increased the requirement from 600 to 930 units. It appears from the record that five best and final offers were received, and on June 30, 1976, award was made to Monitor Northwest Company, as the offeror submitting the lowest price (\$78 per system--the next lowest being \$107.10 each).

State believes that its sample requirement was proper. It argues that notice to offerors of this requirement was not limited to 2 days but rather from the time of receipt of the solicitation because of the RFP provision quoted above. Moreover, it points out that five offerors did supply the sample units for testing in the required time frame. Finally, State explains that since it contemplated receiving a standard, commercial item rather than a special production item to satisfy its requirement, it did not believe a requirement for a pre-production (post-award) sample was appropriate.

We agree with State that offerors had more than 2 days notice of the sample requirement. It is clear that offerors were on notice from the solicitation that a sample might be required at the option of the contracting agency. Comspace takes the position that since the RFP only warned that a sample might be required, Comspace only had 2 days to prepare the sample when the sample actually was requested by State. It seems to us, however, that a prudent offeror should have anticipated from the time it received the RFP that a sample could be required. We do not think it is reasonable to say that Comspace only had 2 days notice under these circumstances. Comspace's contention is not sustained.

Furthermore, to the extent that Comspace attacks the validity of the RFP sample requirement itself, we find that this aspect of the protest is untimely. Under 4 C.F.R. § 20.2(b)(1)(1976), a protest alleging an impropriety in a solicitation, in order to be considered timely, should be filed prior to the closing date for initial receipt of proposals. Comspace did not question the validity of this solicitation requirement until June 28, 1976, which was after initial proposals were received and its proposal was rejected.

B-186839

because of its failure to furnish a sample upon request. Therefore,
the matter will not be considered further.

Accordingly, the protest is denied.

R. Z. Kissin
Deputy Comptroller General
of the United States