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DECISION



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

FILE: B-214299 **DATE:** June 5, 1984
MATTER OF: R&B Rubber and Engineering, Inc.

DIGEST:

1. Untimely protest sent by certified mail 5 working days prior to final date for filing protest will be considered.
2. Agency may award negotiated contract on the basis of initial proposals without discussions if adequate competition is obtained to ensure a fair and reasonable price and the RFP advises offerors of the possibility that award might be made without discussions.
3. Requests for verification of offer did not constitute discussions.
4. Protest alleging defect in RFP filed after the closing date for receipt of proposals is untimely under Bid Protest Procedures and will not be considered.

R&B Rubber and Engineering, Inc. (R&B), protests the award of a contract to Nor-Berg Machine and Tool, Inc. (Nor-Berg), under request for proposals (RFP) No. DAAA09-83-R-4769 issued by the Department of the Army.

R&B protests that Nor-Berg was provided three opportunities to verify its offer and that an award was made to Nor-Berg without any discussions with R&B. R&B also suggests that "the 'Negotiated Clause' (DAR [Defense Acquisition Regulation] [§] 3-215.2)" should have been included in the RFP.

We deny the protest against the award and dismiss the protest against the clause omission.

The Army contends that the protest against the absence of negotiation with R&B is untimely since it was filed with us 16 working days after the date of the notice of award.

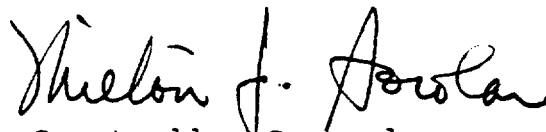
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Although the protest was received late, under our Bid Protest Procedures, if a protest is received after the time limits prescribed, it will be considered if it was sent by registered or certified mail not later than the 5th working day prior to the final date for filing a protest. 4 C.F.R. § 21.2(b)(3) (1983). Since R&B received the notice of award on January 19, 1984, R&B had until February 2, 1984, to file the protest, and the 5th working day prior to that date was January 26, 1984. Since R&B sent the protest by certified mail on January 26, 1984, we will consider the protest against the absence of discussions with R&B.

Award may be made on the basis of initial proposals without discussions if adequate competition is obtained to ensure a fair and reasonable price and the RFP, as in this case, advises offerors of the possibility that an award might be made without discussions. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285; Defense Acquisition Regulation (DAR), § 3-805.1(v), reprinted in 32 C.F.R. pts. 1-39 Vol. I (1983). Here, there were four offerors. Nor-Berg's offer of \$1.98 per unit was the lowest received. It was so low that the contracting officer suspected the possibility of an error. Out of an abundance of caution, the contracting officer requested Nor-Berg to verify its low offer on three different occasions. The second and third requests for verification clarified points not raised in the initial request for verification. The requests for verification did not constitute discussions. See DAR, § 3-805.5(d)(1). Accordingly, in the circumstances, the award to Nor-Berg at \$1.98 per unit without any discussions with R&B was proper.

To the extent R&B contends that the RFP should have included "the 'Negotiated Clause' (DAR 3-215.2)," it is alleging a defect in the RFP. Our Bid Protest Procedures require that a protest alleging a defect in the RFP be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1983); Willa J. Miller; Wanda F. Wheatley, B-214721, April 16, 1984, 84-1 CPD 420. Since this aspect of the protest was not made until after the notice of award was received, it is untimely and will not be considered.

for 
Comptroller General
of the United States