DECISION

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

FILE: B-214303 **DATE:** August 14, 1984

MATTER OF: TM Systems, Inc.

DIGEST:

1. Protest that the solicitation did not set forth the salient characteristics essential to the needs of the government is untimely where not submitted before the closing date for receipt of initial proposals.

2. GAO will not disturb a contracting agency's technical evaluation of a bid where it is not shown to be unreasonable or violative of procurement laws and regulations.

3. Protest that awardee might provide nonconforming items raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

TM Systems, Inc. protests two small purchases under request for quotations (RFQ) Nos. DAAG08-84-Q-S594 and DAAG08-84-Q-S599 issued by the Sacramento Army Depot in California for 29 universal shelves and 308 circuit card assemblies, respectively. We deny the protest in part and dismiss it in part.

Both RFQs initially were issued on a brand name basis, and specified products manufactured by Data Products New England, Inc. as the only acceptable items. This was because at the time the synopses were issued, Data Products was the only supplier of those items known to the contracting activity. RFQ No. -S594 was subsequently amended to include consideration of equal items.

In both instances the Sacramento Army Depot received quotations from TM Systems, Data Products, and International Creative Data Inc. (ICDI). In both instances the contract was awarded to the lowest offeror, ICDI, after confirmation by the cognizant engineering personnel that the ICDI items were equal to the Data Products ones specified.

RFQ No. -S594

Evidently recognizing that the issuance of a solicitation specifying only a particular brand name item does not preclude award to a company offering an equivalent product (see Federal Data Corporation, B-192549, April 6, 1979, 79-1 CPD ¶ 241), the protester nevertheless complains that ICDI intends to provide a shelf other than the one specified in the purchase order actually issued, which TM Systems asserts is the Data Products item.[1]/ The basis for this complaint is that a copy of the purchase order TM secured from the contracting agency does not mention ICDI's product, but instead specifically requires the contractor to supply a shelf manufactured by Data Products.

In response, however, the agency explains that the copy of the purchase order provided TM Systems mistakenly was a preliminary, unsigned (by the government) copy, and that the parties' actual contract specifies ICDI's part. Thus, there is no merit to TM Systems' position.

Moreover, if TM Systems believes that ICDI will not actually supply a conforming product, whether equipment actually furnished under the contract conforms to the specification requirements is a matter of contract administration, which our Office does not review. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 CPD ¶ 7.

RFQ. -S599

TM Systems protests that the solicitation did not set forth the salient characteristics essential to the needs of the government. This argument, however, is untimely and will not be considered by this Office.

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[1]/ TM Systems itself offered an allegedly equal item.

A protest based upon alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed before that date. 4 C.F.R. § 21.2(b)(1) (1984). We received TM Systems' protest almost 1 month after the purchase order was issued. Consequently, the protest based on an allegedly defective solicitation is dismissed.

The protester also argues that the ICDI circuit card assembly is not equal to the brand name product specified in the solicitation.

We find this argument is without merit. The protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD ¶ 448. The record shows that ICDI furnished drawings to substantiate the suitability of its circuit card assembly, and that the engineering personnel at the Sacramento Army Depot examined the drawings and determined that the ICDI assembly was acceptable. We will not disturb a contracting agency's evaluation of the technical adequacy of a bid unless it is shown to be unreasonable or violative of procurement laws and regulations. Interad, Ltd., B-210013, May 10, 1983, 83-1 CPD ¶ 497. TM Systems has provided no evidence that ICDI's product was not adequately reviewed, nor has it otherwise demonstrated that the agency's technical determination was unreasonable.

The protest is denied in part and dismissed in part.

for Milton J. Socolar
Comptroller General
of the United States