

DECISION

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

*1/12/85
R-II*

FILE: B-219731 **DATE:** September 23, 1985

MATTER OF: Litton Datamedix

DIGEST:

Protest alleging that a solicitation requirement is unduly restrictive of competition is dismissed as untimely since GAO's Bid Protest Regulations provide that protests based upon alleged improprieties in a request for proposals apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date in order to be considered. The fact that the protester may have raised an objection to the requirement in its initial proposal does not alter this result because a protest filed with a proposal does not constitute a timely protest.

Litton Datamedix protests the award of a contract to Hunter Medical Company, Inc., under request for proposals (RFP) No. DADA16-85-R-0013, issued by the Department of the Army, Tripler Army Medical Center. The procurement was for the acquisition of fetal heart monitors. Although Litton asserts that its proposal was improperly rejected, the basis for this assertion, and the actual thrust of the protest, is that the specification requirement for a bedside alarm system was unduly restrictive of competition. The Army rejected Litton's proposal as technically unacceptable for not offering this feature.

We dismiss the protest as untimely.

The Army required that offerors propose an alarm system which would permit an examining physician at a monitor in one room to receive alarm signals from a monitor in another room, and then enable him to tune his monitor to receive all diagnostic information from the other monitor. Litton did not propose such a feature, but rather offered its corridor light alarm system. For this reason, the Army rejected the firm's proposal as technically unacceptable.

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Litton had taken exception to the requirement for a bedside alarm system in its initial proposal, and repeated its objection in its best and final offer by stating that the bedside system was not available as a standard product, instead proposing its corridor light system as an alternative. Litton urges that we should find that the requirement for a bedside alarm system is unduly restrictive of competition and that the Army, therefore, improperly rejected its lower price offer.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), provide that protests based upon alleged improprieties in a request for proposals which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date in order to be considered. TEAM Corp., B-218584, June 27, 1985, 85-1 CPD ¶ 734. In this regard, although Litton indicated in its initial proposal that it objected to the bedside alarm requirement,^{1/} it is well-settled that a protest filed with a proposal does not constitute a timely protest. Cosmos Engineering, Inc., B-217430, Jan. 18, 1985, 85-1 CPD ¶ 62. Therefore, since Litton did not raise the issue until it filed its protest with this Office on July 26, some 5 months after the February 25, 1985 closing date for receipt of initial proposals, the issue is clearly untimely.

In any event, this Office will not object to a restriction on the competition if it can be shown that the restriction is deemed necessary to meet the agency's actual minimum needs. Bell & Howell Company, Inc., et al., B-213122, et al., May 25, 1984, 84-1 CPD ¶ 573. Here, the Army has clearly met its prima facie burden of showing that the bedside alarm requirement is a necessary restriction by advising that Tripler's small obstetrics and gynecological staff and correspondingly large volume of births mandate

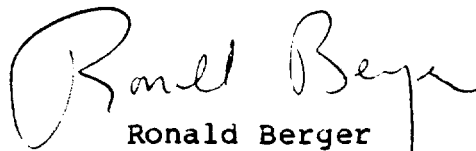
^{1/}It is even questionable whether the exception to the alarm requirement noted in Litton's proposal can be considered a protest. Litton stated that: "Exception is taken to programable alarms at the Central Station. Litton Datamedix uses a more sophisticated software alarm system to recognize the severity of alarms. Therefore, exception is taken to the wording, and not intent of the capability." Litton's proposal did not detail the alarm system it proposed to furnish. Nevertheless, the proposal was considered acceptable subject to clarification of the alarm system offered, and Litton was requested to submit its clarification with its best and final offer.

the use of such a sophisticated fetal monitoring alarm system, and we have found nothing in Litton's submissions that serves to overcome that showing. Id.

Therefore, Litton's proposal was properly rejected as technically unacceptable because it did not meet a material requirement of the solicitation. See True Machine Co., B-215885, Jan. 4, 1985, 85-1 CPD ¶ 18. Moreover, the fact that the firm may have offered a lower price is immaterial since a proposal that has reasonably been found unacceptable cannot be considered for the award. Lanier Business Products of Western Maryland, Inc., B-214468, July 23, 1984, 84-2 CPD ¶ 85.

Litton also alleges that Hunter engaged in improper contacts with the procuring activity's personnel during the source selection process. The Army responds that, in fact, it was another offeror, and not Hunter, which tried to gain information concerning the award of the contract. As Hunter did not make these overtures, we fail to see how they had any effect upon the propriety of the award. Accordingly, since we accept the Army's version of events absent any conclusive showing to the contrary, we need not consider the matter further. See National Council for Urban Economic Development, Inc., B-213434, Aug. 1, 1984, 84-2 CPD ¶ 140.

The protest is dismissed.


Ronald Berger
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General Counsel