



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Minnesota Mining & Manufacturing Co.,  
**File:** Magnetic Media Division  
B-225773  
**Date:** May 1, 1987

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## DIGEST

1. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals are untimely unless filed prior to the closing date.
2. The capability of meeting the RFP's requirements is a matter of responsibility and we do not review affirmative determinations of responsibility absent fraud or bad faith on the part of contracting officials or the misapplication of definitive responsibility criteria.

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## DECISION

Minnesota Mining & Manufacturing Co., Magnetic Media Division (3M), protests the award of a contract to Ampex Corporation (Ampex), under request for proposals F09603-87-R-8021 issued by the Air Force Logistics Command (AFLC) for a quantity of video tape cassettes.

The protest is dismissed.

3M contends that the RFP's request for 4 first article samples is insufficient to predict the success of the purchase of 54,070 cassettes. Second, 3M alleges that there is a flaw in the solicitation's "Proposal A" since it allows the Air Force 130 days for approval of first articles when the environmental stability test requires 181 days for completion. Third, 3M argues that Ampex's proposal offered a delivery of first articles and data within 60 days and Ampex cannot prepare the necessary first article data between the time the contract was awarded and the promised delivery of first articles and data.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent

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prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1986). The closing date for offers was on January 12, 1987, and 3M's protest was filed in this Office on February 27, 1987.

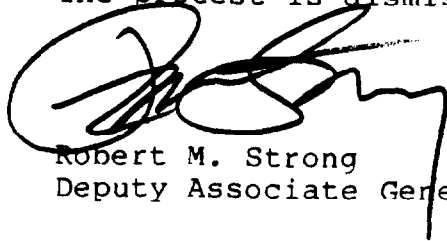
The solicitation provided two alternatives under which offerors could make their proposals. Alternative "A" was for offerors who had not previously provided the items to the government and alternative "B" was for offerors who had previously furnished the items to the government. Alternative "A" consisted of four first articles, first article test data and 54,074 production units. Alternative "B" was for 54,078 production units.

3M submitted its proposal under alternative "B" and Ampex submitted its lower priced proposal under alternative "A." Although 3M thought that it was the only offeror qualified, 3M was effectively notified by the terms of the solicitation that under alternative "A," competitive proposals could be submitted wherein only four first article samples were required of offerors who had not previously provided these items to the government. Moreover, the terms of alternative "A" clearly provided the Air Force 130 days for approval of first articles instead of 181 days. Accordingly, 3M's protest that these provisions are improper is untimely as its protest was filed after closing. 4 C.F.R. § 21.2(a)(1) (1986). This is so even though 3M did not know Ampex would offer under alternative "A" as the potential that Ampex or another offeror would do so was evident from the RFP itself. These two bases of protest are dismissed.

3M's third contention is that Ampex cannot prepare the first article data within 60 days of award. As AFLC points out, however, there is nothing to show that Ampex, prior to award, had not already completed environmental testing of its product. Insofar as 3M's protest is a challenge to Ampex's capability to perform the contract, we have held that the capability of meeting the RFP's material requirements is a matter of responsibility. John Crane-Houdaille, Inc., B-221329, Apr. 25, 1986, 86-1 C.P.D. ¶ 405. We do not consider protests of a contracting officer's determination that an offeror is responsible unless, unlike here, the protester shows possible fraud or bad faith on the part of contracting officials or alleges that the solicitation contains definitive responsibility criteria which have been

misapplied. Security Systems, B-217203, Aug. 26, 1985, 85-2  
C.P.D. ¶ 229.

The protest is dismissed in part.

A handwritten signature in black ink, appearing to read 'R. Strong', with a long vertical line extending downwards from the end of the signature.

Robert M. Strong  
Deputy Associate General Counsel