

Vader



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: MMI of Mississippi
File: B-236133
Date: August 14, 1989

DIGEST

Protest based upon alleged solicitation impropriety, apparent from the face of the solicitation is untimely where not filed until after the closing date for receipt of initial proposals.

DECISION

MMI of Mississippi, the apparent low offeror, protests the award of a contract at a higher price, to Triad Medical, Inc./R.C. Smith Co., under request for proposals (RFP) No. N00129-89-R-0015, issued by the Naval Submarine Base New London, for modular pharmacy casework workstations.

MMI specifically argues that the agency's rejection of its offer for failure to propose drawers with metal sides as required by the RFP was improper because the specification for metal sides is restrictive of competition and favors one manufacturer. MMI also argues that the agency allegedly failed to promptly notify MMI of the rejection of its offer.

The agency issued an RFP to 25 firms on March 20, 1989, accompanied by minimum standard specifications which included requirements for drawers with metal sides. The closing date for receipt of proposals was April 19. Proposals were received from five firms including MMI which submitted a lower price than did the awardee. The agency rejected the protester's proposal as technically unacceptable because the firm's proposed work stations specifically failed to conform to paragraphs 22 and 23 of the specifications which required metal drawer sides. The Navy sent notice to MMI on June 19 (received by the protester on June 26) that it had awarded the contract to Triad Medical. This protest was filed with the General Accounting Office on July 11.

MMI argues that the specifications were unduly restrictive and favored one particular manufacturer, and that its drawer

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made of hardwood and laminated particle board should be acceptable. We will not consider this issue because it is untimely. This contention essentially concerns an alleged impropriety apparent from the face of the RFP; to be considered timely, protests concerning alleged solicitation defects apparent from the RFP must be raised prior to the closing date for receipt of proposals, 4 C.F.R. § 21.2(a)(1) (1988); Eastern Technologies, Inc., B-232198, Aug. 24, 1988, 88-2 CPD ¶ 177. Since this protest, was not filed until after award was made, it clearly is untimely.

Further, to the extent MMI challenges the rejection of its low offer as unacceptable, we think the rejection was proper since, by its own admission, MMI offered non-metal sided drawers which were not permitted under the RFP specifications.

Finally, the protester alleges that the agency failed to promptly notify it of the rejection of its offer. Delayed notice of proposal unacceptability does not constitute grounds for protest; delays by a contracting agency in advising of the unacceptability of the proposal does not affect the validity of the rejection of the proposal. See Golden Reforestation, Inc., B-230169, Feb. 25, 1988, 88-1 CPD ¶ 196. Accordingly, we will not consider this issue.

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