

Miller 143983



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Acme Moving & Storage Company, Inc.  
**File:** B-243358  
**Date:** May 20, 1991

Dale B. Coleman for the protester,  
Jerry Quackenbush for Daniel Moving & Storage, Inc., an  
interested party.  
Amy J. Brown, Esq., General Services Administration, for the  
agency.  
Behn Miller, Office of the General Counsel, GAO, participated  
in the preparation of the decision.

### DIGEST

Under the General Accounting Office Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of the solicitation must be filed prior to the time set for the receipt of initial proposals; where, after solicitation's initial closing date, protester challenges solicitation's requirements as unduly restrictive on small business concerns, protest is untimely since requirements were clearly set forth in the solicitation.

### DECISION

Acme Moving & Storage Company, Inc. protests the requirements of request for proposals (RFP) No. GS-04P-90-EWD-0118, issued by the General Services Administration (GSA) for moving and office relocation services in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Acme maintains that the solicitation's technical evaluation factors and the method of evaluation are discriminatory towards small business concerns.

We dismiss the protest.

The RFP was issued as a small business set-aside requirements contract on October 8, 1990; offerors were to provide technical and cost proposals for a 1-year base period and two 1-year option periods. Apparently, when issued, the solicitation was mistakenly identified as a "sealed bid" on Standard Form 33; on October 22, by amendment No. 0001, GSA corrected this misdesignation to "negotiation" and extended the receipt of proposals date to November 8, 1990.

The RFP provided that each offeror's technical proposal would be evaluated by a Source Selection Board based on the following factors:

- "(a) Past Experience on Similar Projects
- (b) Type and Quality of Equipment
- (c) License, Permits and Certificates."

Under the RFP, as part of its technical proposal, each offeror was required to complete three response forms regarding technical acceptability. The first response form required offerors to "[l]ist a minimum of 5 relocations within the last 3 years. A minimum of 3 of these moves must be at least 50,000 square feet each in area." The second response form required each offeror to "list two moves which have occurred simultaneously and which total at least 65,000 square feet." The third response form required each offeror to demonstrate its access to two specialized electronic trucks; four closed-type general purpose vans; two pallet jacks and one motorized fork lift truck.

Several offerors, including Acme, submitted proposals by the November 8 closing date. After reviewing the Acme proposal, by letter dated January 16, 1991, the contracting officer informed Acme that the information provided on its technical response forms was insufficient; the contracting officer requested final written clarification by February 8.

On February 7, Acme filed an agency-level protest arguing that the solicitation's technical evaluation factors and the use of a source selection evaluation board are unduly restrictive on small business concerns; by letter dated March 5, the contracting officer denied Acme's agency-level protest. On March 19, Acme filed the instant protest with this Office.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests; these timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Servicio Internacional de Proteccion Baker, S.A., B-241670, Jan. 22, 1991, 91-1 CPD ¶ 64. Under our timeliness rules, a protest based on alleged improprieties in a solicitation, such as unduly restrictive specifications, which are apparent prior to the time for receipt of initial proposals, must be filed with the contracting agency or our Office before that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991); Electronic Sys. USA, Inc., B-241254, Jan. 16, 1991, 91-1 CPD ¶ 43.

Here, while the use of a source selection evaluation board and the technical evaluation factors were clearly set forth in the RFP, Acme did not protest these solicitation requirements to GSA or our Office prior to the November 8 initial closing date. The protest to our Office was filed within 10 working days of GSA's decision on Acme's agency-level protest, as provided in our Regulations, 4 C.F.R. § 21.2(a)(3); however, our Regulations also provide that a subsequent protest to our Office will only be considered if the agency-level protest itself was timely filed. Id. Since Acme's protest to GSA was not filed until February 7, 3 months after the date for receipt of initial proposals, and thus was untimely, its subsequent protest to our Office also was untimely.

The protest is dismissed.

*Christine S. Melody*  
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Assistant General Counsel