

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

B-176694

JAN 22 1973

Media Publishers, Inc.
c/o Marvin W. Mindes, Esq.
111 West Washington Street
Chicago, Illinois 60602

Gentlemen:

Reference is made to your letters dated August 11 and November 13, 1972, protesting the contract award to another firm under RFP NO0600-72-R-5488, issued by the Navy Purchasing Office, Washington, D. C.

The solicitation covered a requirement for a quantity of drug information kits and ancillary items which were to be used for drug education purposes by the Human Resource Development Project Office of the Bureau of Naval Personnel. While you submitted three alternate offers the Navy considered only your highest priced offer to be acceptable. A contract was therefore awarded to another offeror on June 28 at a lower price than your only acceptable offer.

Your protest raises a number of issues, each of which is considered below in determining whether the protest was timely submitted under section 20.2(a) of our Interim Bid Protest Procedures and Standards, which states in part as follows:

"20.2 Time for filing.

(a) * * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In other cases, bid protests shall be filed not later than 5 days after the basis for protest is known or should have been known, whichever is earlier. If a protest has been filed

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B-176694

initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely.
* * *

First, you have protested the contracting officer's determination to reject one of your alternate proposals as unacceptable. In support thereof you contend that your first indication that certain pamphlets included in your kit were unacceptable, and that a pamphlet revision was a fixed requirement, occurred on June 26. However, the Navy's report to this Office states that you were advised of this determination during the course of negotiations on June 14, 1972. Our review of your updated proposal revision, which was received by the Navy on June 21, indicates an awareness on your part that the Navy had previously advised you of a definite requirement for certain revisions to the pamphlets. While your submission on June 21 states that the pamphlet revision would either have to be postponed until your existing inventory was exhausted, or additional charges would have to be negotiated to cover the costs of making the changes, you did not question the necessity or justification for such changes within five days after June 14. You protested on this basis only after the Navy, on June 28, accepted the proposal of another bidder which was lower in price than your acceptable proposal.

You also question the equality of the negotiating process on several bases. Essentially, you object to (1) the delays and extensions for submitting proposals, which you contend gave your competitor additional development time prior to the close of negotiations on June 28; (2) the alleged failure to expeditiously evaluate proposals, which you state became evident to you on June 14; (3) the giving of prior oral notice to the successful offeror but not to your firm of the extension of the closing date for submitting proposals; (4) the oral notification on June 14 of the new date for receipt of offers and the alleged failure to immediately issue a written amendment reflecting this change; and (5) the furnishing of price and other information to the successful offeror in violation of the regulatory prohibition against auction techniques.

The first two objections listed above were raised for the first time in your letter of August 11 to this Office and were therefore untimely.

B-176694

As to the third objection, the record shows that the Navy unsuccessfully attempted to reach your firm's representative on June 12 to provide oral notification of the extension of the closing date for submitting proposals, as was provided to the successful offeror.

Concerning your failure to receive written confirmation of Amendment 0003 which, among other things, extended the date for receipt of offers, we note that you proceeded to submit revisions to your proposal without objection after you had been orally advised on June 14 of the modifications, and that you delayed protesting on this account until after the contract award on June 28 to another bidder. Moreover, your offer ostensibly conformed to the Government's requirements as provided in the modification and was rejected only because it was not low. Thus, you have failed to show how you were prejudiced by your failure to receive Amendment 0003 which the Government contends was sent to you on June 14.

With regard to your fifth objection listed above, the Navy report denies that pricing or other information was furnished the successful offeror in violation of the regulatory prohibition of auction techniques, and your protest provides no basis for questioning that denial.

Finally, you have protested the contract award to Media Engineering for the following reasons: (1) the failure of the solicitation to require the firm to submit, before award, a prototype tape which had actually been produced by the company, (2) the specifications were developed contrary to regulation through an inspection and analysis (reverse engineering) of kits produced and supplied by your firm, (3) the procurement should have been on a noncompetitive basis, (4) the proposals were erroneously evaluated solely on the basis of price and in violation of the solicitation provisions, (5) the successful offeror's proposal was technically deficient and deviated from the solicitation and (6) the procedures followed violated the Navy Procurement Directives.

As to the first three reasons, they involve improprieties which should have been apparent prior to the closing date for receipt of proposals, and a protest against such improprieties was therefore required to be filed with this Office prior to such time.

B-176694

With regard to your contention that evaluation of proposals on the basis of price violated solicitation provisions, we have noted that the solicitation specifically provides that among technically acceptable proposals award is to be made on the basis of price. While you also suggest that the successful offeror's proposal was technically deficient and deviated from the solicitation and that the procedures followed violated the Navy Procurement Directives, you have not furnished us any specific facts or reasons to support your conclusions and we see no basis in the present record for agreeing with your contentions in this regard.

For the foregoing reasons, your protest must be denied.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States