



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Modular Communications Systems, Inc.

File: B-265745

Date: September 29, 1995

DECISION

Modular Communications Systems, Inc. (MCS) protests the rejection of its proposal under request for proposals (RFP) No. F48608-95-R-0002, issued by the Department of the Air Force for a land mobile radio control system. Modular contends that the reasons given by the agency for the rejection of its proposal have no merit.

We dismiss the protest as untimely.

Subsequent to the issuance of the RFP on January 4, 1995, MCS questioned the agency's requirement that the system be compatible with existing Motorola Centracom II Plus console equipment because the requirement would restrict competition to Motorola. Amendment 2 to the RFP confirmed the requirement that the new system would have to interface with the agency's four operating Motorola Centracom II consoles. MCS subsequently submitted a proposal, which it stated was "compliant" with "the intent of the specifications." By letter of June 2, the agency rejected MCS' proposal as outside the competitive range. The letter advised that the proposal failed to address the quality control and performance requirements and that substantial technical drawbacks were apparent in numerous areas including critical telephone integration and interface, the central electronics package, and the Sta-Alert compatibility. MCS protested the rejection of its proposal by letter of June 13. By letter of July 3, the contracting officer denied MCS' protest. A "Return Receipt" indicates that MCS received this letter on July 10. MCS filed its protest to our Office on August 14.

Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f). MCS' August 14 protest to our Office was filed more than 10 working days after it received (July 10) the agency's denial of its agency-level protest and is, therefore, untimely.

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To the extent that MCS may be protesting that the procurement specifications favored award to Motorola, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). While MCS raised the issue with the agency, it did not timely protest the matter since its protest was not filed until after the rejection of its proposal by the agency.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel