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DECISION



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

FILE: B-197858

DATE: July 1, 1980

MATTER OF: Data Technology Industries, Inc.

DLG04881

DIGEST:

1. [Protest against alleged solicitation improprieties] which were apparent prior to closing date for receipt of initial proposals, is untimely under 4 C.F.R. § 20.2(b)(1) (1980) and will not be considered since protest was filed after closing date for receipt of initial proposals.
2. Where acceptance period expired on all proposals at time provided in RFP, contracting officer may allow offeror to waive expiration of proposal acceptance period without reopening negotiations so as to make award on basis of offer as submitted since waiver would not be prejudicial to competitive system.

Data Technology Industries, Inc. (Data), protests the award of a contract to Creative Mailing Consultants under request for proposals (RFP) No. 104-79-HEW-OS issued by the Department of Health, Education, and Welfare (now the Department of Health and Human Services) for certain systems analysis and programming support. Data essentially objects to the award because, in its view, (1) the contracting officer permitted the awardee to accept the award based on its offer even though its acceptance period expired, (2) the RFP's evaluation criteria were unclear, and (3) the RFP may not have included the provisions required by section 211 of Public Law No. 95-507. For the reasons outlined below, Data's protest is denied.

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The record shows that best and final offers were submitted on December 20, 1979, and that the RFP provided that proposals were to be firm for at least 60 days. No one argues that the awardee took exception to that provision and it appears that its offer was available for acceptance for only 60 days. On March 7, 1980, after expiration of the acceptance period, the contracting officer awarded the contract.

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Data protests on the grounds that the request of the contracting officer that the awardee accept an award on its expired offer constituted a reopening of negotiations. Data argues that negotiations should be reopened and the proposal modifications submitted by Data after it submitted its best and final offer should be incorporated into its proposal. Those modifications were determined by the contracting agency to be late and therefore unacceptable. Data cites our decision in Medical Coaches, Inc., B-196339.2, October 30, 1979, 79-2 CPD 308, wherein we stated a contracting officer generally may allow an offeror to waive the expiration of its offer acceptance period so that an award may be made on an expired offer as submitted, provided the waiver would not be prejudicial to the competitive system. Data believes it was prejudiced because further negotiations were not conducted which would permit consideration of its late modifications.

Data also protests that the evaluation criteria were defective since, at one place in the RFP, 50 percent of the evaluation point score was allotted to price/cost and 50 percent to technical matters even though elsewhere in the RFP it was provided that "[p]roposals offering total compensation levels less than currently being paid by the predecessor contractor for the same work" were to be evaluated on certain stated bases. Data argues that these provisions made the basis for evaluation unclear and uncertain.

Finally, Data contends that it is uncertain whether the RFP included the contract provisions required by section 211 of Public Law No. 95-507 with respect to subcontracting. Absent such inclusion, Data contends that the RFP should have been amended. The contracting agency states that section 211 is inapplicable as the procurement is under the \$500,000 threshold amount established in section 211.

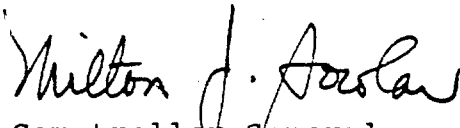
Data's objections--to the RFP's evaluation criteria and the necessity for including the section 211 provisions in the RFP--are against alleged improprieties in the solicitation which should have been apparent prior to the closing date for receipt of initial proposals. Our Bid Protest Procedures provide at 4 C.F.R. § 20.2(b)(1) (1980) that protests against alleged

improprieties in an RFP should be filed prior to the closing date for the receipt of initial proposals where those alleged improprieties are, as here, apparent prior to the closing date. Since Data's protest on these matters was not made until after the closing date, they are untimely and will not be considered.

Data's contention--that the acceptance of an expired offer for award without reopening negotiations was prejudicial--is without merit. We have held that where, as here, all offers have expired and the awardee did not restrict the acceptance period of its offer contrary to the RFP's time period, all parties to the procurement have equal standing and we have not found the waiver of the expiration of the acceptance period to be prejudicial to the competitive system. Medical Coaches, Inc., supra; United Electric Motor Company, Inc., B-191996, September 18, 1978, 78-2 CPD 206.

On the other hand, the agency was not required to reopen discussions with all offerors in the competitive range merely to give Data an opportunity to incorporate its late modifications. Data had a fair opportunity to submit a best and final offer on its most favorable terms. We must conclude that the agency's determination not to consider Data's late modifications was proper and its determination not to reopen discussions with all offerors merely to consider those late modifications is not objectionable. Cf. RCA Service Company, B-197752, June 11, 1980, 80-1 CPD ____.

Accordingly, Data's protest is denied.



Acting Comptroller General
of the United States