

Jordan



Comptroller General  
of the United States

23667

Washington, D.C. 20548

# Decision

**Matter of:** Marquette Electronics, Inc.

**File:** B-261559

**Date:** July 6, 1995

## DECISION

Marquette Electronics, Inc. (MEI) protests the award of a contract to SpaceLabs Medical under request for proposals (RFP) No. SPO200-95-R-8009, issued by the Defense Logistics Agency for medical equipment.

We dismiss the protest as untimely because the essence of the protest is a challenge of an alleged solicitation impropriety that should have been protested before the initial closing date for submission of proposals.

The RFP specified a patient monitoring system, Marquette Electronics, Inc. or equal, which satisfied certain salient characteristics that were detailed in the solicitation, for use at the 121st Evacuation Hospital in Seoul, Korea. As part of its system, the protester proposed the brand name item, a MUSE 500, while the awardee proposed an equal system and components. MEI contends that neither SpaceLabs nor any other manufacturer has the ability to satisfy the specifications of the MUSE 500. In particular, MEI observes that no other manufacturer produces a system which offers a 12-lead ECG and other data collection capability and which can interface with other MEI equipment already in use at the 121st Evacuation Hospital.

By contending that only a MUSE 500 system can satisfy the agency's requirements, MEI is essentially challenging the specification of an "equal" item. As such, its protest is based upon an alleged impropriety in the solicitation. Our Bid Protest Regulations contain strict rules requiring timely submission of protests, and protests of solicitation improprieties, apparent prior to the closing date for receipt of initial proposals, must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1995); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, MEI did not protest the specification until after the award.

MEI's argument that the awardee's product does not offer the 12-lead and interface capabilities of the MUSE 500 is without basis. Neither of these capabilities is listed as a

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salient characteristic which an equal item must meet. An equal product need not be an exact duplicate of the brand name in design or performance. Solid Waste Integrated Sys. Corp., B-258544, Jan. 17, 1995, 95-1 CPD ¶ 23. Rather, the equal product must satisfy the salient characteristics as they are set forth in the solicitation; it generally need not satisfy features of the brand name that are not specified. Id. The agency explains that the product offered by SpaceLabs meets all salient characteristics and is technically acceptable. In this regard, the protester has not identified any specified salient characteristic which the SpaceLabs system does not meet.<sup>1</sup>

The fact that MEI has requested, but has not yet received, a copy of the winning proposal and other documents from the agency under the Freedom of Information Act (FOIA), does not affect our conclusion. MEI learned of the award on March 13, and filed an agency-level protest on March 13, with a supplement on March 31, raising essentially the same protest as before our Office. On May 4, MEI first filed a FOIA request for the documents. While a protest may be based on information obtained under the FOIA, that request must be made within a reasonable period of time. Atrium Bldg. Partnership--Second Recon., B-228598.3, May 18, 1988, 88-1 CPD ¶ 466. It is incumbent upon a contractor to remain diligent in its pursuit of a protest so as not to delay the procurement process any more than absolutely necessary. Bollinger Mach. Shop & Shipyard, Inc.--Recon., B-245702.2, Jan. 16, 1992, 92-1 CPD ¶ 87. Here, MEI did not request the documents in question until more than 7 weeks after it learned of the award. We do not consider this to be diligent pursuit. See John C. Grimberg Co., Inc.--Recon., B-219422.2, Aug. 7, 1985, 85-2 CPD ¶ 143.

The protest is dismissed.



Paul Lieberman  
Assistant General Counsel

<sup>1</sup>The protester also alleges that a vendor which did not submit a proposal in response to the RFP, contacted it for a quote on the MUSE 500, allegedly for use at the 121st Evacuation Hospital. The vendor is not associated with the awardee and there is no evidence that the quote request has any relevance to this procurement.