



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

B-178624 (2)

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October 5, 1973

Robert Sheriffs Moss & Associates
1819 H Street, NW.
Washington, D.C. 20006

Attention: Robert Sheriffs Moss, Esq.

Gentlemen:

By telefax dated May 9, 1973, you protested, as counsel to AMF, Inc. (AMF), any award under request for proposals (RFP) NHTSA-3-A862, issued by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

On May 18, 1973, based upon available information, our Office advised you that since your protest was based upon an alleged impropriety in the specifications which was apparent prior to the closing date for receipt of proposals (April 11, 1973), in accordance with section 20.2 of our Interim Bid Protest Procedures and Standards, your protest was untimely and would not be considered. A similar letter was forwarded to the Secretary, DOT.

Thereafter, on May 21, 1973, our Office received your letter dated May 18, 1973, indicating that AMF had not received the RFP, but only a copy of the Work Statement. Based upon this representation, on May 29, 1973, our Office forwarded a copy of your May 18 letter to DOT for reply. The decision to develop the case at that time was predicated upon the assumption that section 20.2 of the Interim Bid Protest Procedures and Standards was inapplicable since in the absence of receiving the RFP, AMF could not have protested prior to the closing date for receipt of proposals.

DOT states that a copy of the RFP was picked up by an AMF messenger on April 10, 1973. However, while it is disputed whether AMF ever received a full copy of the RFP, it is clear that AMF received a copy of the Work Statement at least by April 23, 1973. The Work Statement contained the specifications of which you complain.

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In any event, we now believe the protest is untimely under that portion of section 20.2 of our Interim Bid Protest Procedures and Standards which states that in cases other than those based upon improprieties apparent prior to the closing date for receipt of proposals, a bid protest shall be filed not later than 5 days after the basis for protest is known or should have been known, whichever is earlier. The basis for the protest should have been known to AMF from the Work Statement at least by April 23, 1973. Therefore, your protest telefax dated May 9, 1973, and received by our Office on May 10, 1973, was beyond the prescribed 5-day period.

Therefore, we continue to be of the view that your protest is untimely and it will not be considered on the merits by our Office.

There is enclosed a copy of our letter of today to the Secretary of DOT, recommending that NITSA's Qualified Offerors List, in its present form, be eliminated.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States