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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: American Hospital Consultants Company

File: B-226166

Date: April 8, 1987

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## DIGEST

A proposal submitted by telegram is not acceptable where prohibited by the terms of the solicitation notwithstanding any alleged oral advice to the contrary.

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## DECISION

American Hospital Consultants Company protests the award of a contract to Browning-Ferris, Inc., under request for proposals (RFP) No. DABT35-86-R-0129, issued by the Department of the Army. The solicitation requested proposals to furnish and install a complete solid waste management system in a hospital at Fort Dix, New Jersey. American contends that its proposed price was the lowest and it had been encouraged by an Army contract specialist to submit by telegram the proposal that the Army later rejected because the RFP did not permit the submission of proposals by telegram.

We deny the protest.

The solicitation was issued on September 26, 1986 with a closing date of November 21 for receipt of proposals. American learned of the solicitation shortly before proposals were due. The firm contacted the agency to see if it could get a copy of the RFP in time to submit a proposal (apparently the telephone call was made 1 day before the due date). When it became obvious it was not possible to forward the RFP in time, American had the contract specialist read it the line items required. According to the contracting officer, the firm was also advised of the amendments to the solicitation, the requirement for descriptive literature and references of prior installations and the delivery schedule. American asserts that it was told that telegraphic offers were acceptable; on the other hand, the agency claims the contract specialist told the firm that she was not sure a telegraphic offer would be acceptable. In any event, American submitted a telegraphic offer some \$6,000 below the awardee's

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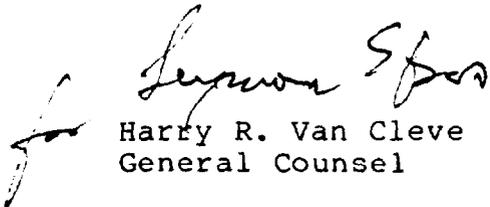
price without the benefit of reviewing the extensive specification and other solicitations requirements. American acknowledged the amendments, and said it "can meet all of the bid criteria and requirements." Its offer specifically excluded any taxes that may be applicable, and obviously did not include descriptive literature.

The RFP contains the clause set out in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.216-9 (1985), which states that telegraphic offers are not acceptable unless authorized by the solicitation. Nothing in this solicitation gives this authorization. American's proposal was rejected because it was submitted by telegram and for failure to provide descriptive literature of the products offered.

Where, as here, the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of proving its case. Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 CPD ¶ 112 at 4. Moreover, we point out that the RFP also contained the clause from FAR, 48 C.F.R. § 52.215-9, that specifically states that oral explanations or instructions given by the agency before contract award shall not be binding. Thus, even if American had been misled by the contract specialist, we would hold that its reliance on oral advice was unreasonable. Westinghouse Electric Co., B-224492, Aug. 6, 1986, 86-2 CPD ¶ 165.

Nonetheless, even if the telegraphic offers were acceptable, American's offer could not be considered. Among other things, none of the representations, certifications and other statements required of the offeror were completed or even alluded to in the telegram. Taxes were specifically excluded from the offer although the solicitation required the price to include applicable federal, state and local taxes. Neither descriptive literature, references from prior installations, the name of the manufacturer of the equipment or the model numbers proposed were furnished, although this information was also required by the terms of the solicitation. In short, the telegraphic proposal was so deficient as to be unacceptable on its face, since it would have required almost total revision to be considered.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel