



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: L&E Service Company

File: B-231841.2

Date: October 27, 1988

DIGEST

1. Protest that offeror was not allowed sufficient time after alleged delayed receipt of request for proposals amendments to prepare revised proposal is denied where there is no showing agency deliberately attempted to exclude protester, agency received 10 timely proposals and protester had amendment 1 week prior to closing date.
2. Allegation that solicitation was ambiguous as to what was required of contractor is denied where reading of solicitation, as a whole, resolves any ambiguity.

DECISION

The L&E Service Company protests the terms of request for proposals (RFP) No. DABT23-88-R-0031, issued by the Department of the Army, Fort Knox, Kentucky, for food services. In general, the protester contends that (1) the solicitation is ambiguous and did not provide sufficient information for offerors to submit competitive proposals; and (2) the agency issued two amendments without allowing offerors time to amend their proposals.

We deny the protest.

The solicitation, issued on May 6, 1988, established July 7 as the closing date for submission of offers. On June 21, the Army issued amendment 3, and on June 23, it issued amendment 4. These two amendments made a number of substantive changes in the RFP. On June 27, L&E complained about not receiving the amendments. L&E received amendment 4 on June 28 and amendment 3 on July 1, but did not submit a proposal. The agency received 10 proposals, all of which were judged technically acceptable, and the agency intends to make award to the offeror with the lowest price.

043680/137179

L&E filed a protest with this Office on July 7, 1988, contending that the RFP was ambiguous and susceptible to more than one interpretation. In its protest, L&E said that from June 7 through June 23, it repeatedly telephoned the Army for information regarding the RFP and the work to be performed but contracting officials refused to send written confirmation of their oral clarifications.

Initially, the Army contends the protest should be dismissed as untimely because all of the matters which L&E raises are alleged improprieties in the solicitation which must be protested prior to the date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1988). While L&E, by telex, filed its protest on July 7, several hours before the time set for receipt of proposals, the Army argues that the telex did not contain sufficient information for the agency to understand the grounds of protest. The Army contends that the protest should be considered filed on July 12, 1988, when our Office received a more detailed letter explaining the protest bases.

We disagree and find the protest to have been timely filed. The July 7 telex read, in part, as follows regarding the basis of protest:

- "A. Delayed receipt of amendment 3 and 4.
- "B. Ambiguities in the contract with respect to government or contractor supplied expendable supplies.
- "C. Requested items under review by OMB Circular A76 study do not contain estimated use specification."

We find this telex sufficiently set forth the grounds of protest, especially in view of the fact that the protester had spoken to agency personnel on numerous occasions regarding what it considered to be problems with the specifications.

L&E contends that since amendment 3 introduced numerous changes, the Army did not allow sufficient time for offerors to adequately prepare their proposals, because L&E received the amendment only 2 working days before proposals were due. L&E received the amendment on July 1, but because of the weekend and the July 4 holiday, it computes it only had 2 working days. The Federal Acquisition Regulation (FAR) requires that an amendment afford offerors sufficient time to consider the information contained therein in preparing and modifying their offers. FAR § 15.410. However, the

decision as to the appropriate preparation time lies within the discretion of the contracting officer. See Uniserv, Inc., et al., B-228530, Dec. 23, 1987, 87-2 CPD ¶ 621. There is nothing in the record which would indicate that the contracting officer abused his discretion here. As noted earlier, amendment 3 was issued on June 21 and amendment 4 on June 23. The amendments were mailed on June 23 and June 24, respectively, and 10 timely proposals were received.

Moreover, there is no evidence that there was a deliberate attempt to exclude the protester from the competition. In fact, the record shows the opposite--that L&E was listed on the offerors mailing list and was mailed copies of the amendments on the same dates the other offerors' copies were mailed, and that when the protester contacted the agency to state it had not received the amendments, the agency again sent the amendments, this time by Federal Express. In cases such as this, the offerors simply bears the risk of nonreceipt of a solicitation amendment, and the nonreceipt or late receipt of an amendment provides no basis for disturbing a procurement when full and open competition and reasonable prices are obtained. REL, B-228155, Jan. 13, 1988, 88-1 CPD ¶ 25. That is the situation we find here.

L&E also protests that the solicitation is unclear whether the contractor or the government is to furnish "expendable supplies" in dining facilities where the contractor is only to furnish Dining Facility Attendants (DFA).

Examples of expendable supplies were listed in Technical Exhibit 5 of the solicitation and are items such as china, serving spoons and pans. Exhibit 5 states that the contractor is responsible for maintaining the level of expendable supplies listed for each building where the contractor has full food service duties. However, for buildings where the contractor is only performing DFA duties, these duties are described as janitorial and custodial functions, not food service. Therefore, it is clear that in buildings where the contractor has only DFA duties, the government would be responsible for the expendable supplies, while in buildings with full food service the contractor would be responsible. We believe this was adequately conveyed by the solicitation, when read as a whole and giving effect to each provision. See Professional Pension Termination Assocs., B-230007.2, May 25, 1988, 88-1 CPD ¶ 498.

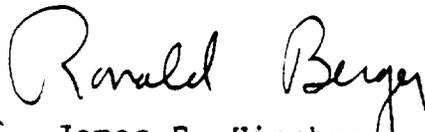
While L&E makes much of the failure of the solicitation to distinguish between janitorial supplies and cleaning supplies, it should have been clear that the agency used the terms interchangeably to describe the same items and we fail to see how this prejudiced the protester.

Finally, L&E protests that line items 0036 through 0053 for furnishing dining facility attendant services at 18 separate buildings from October 1, 1988 through February 28, 1989, do not contain any estimated quantities.

These line items have zero entered as the estimated quantities because the buildings are utilized for ROTC training, which occurs in the summer months, not during the October to February period. The Army requested the unit prices because the contractor may have to service these buildings later depending on the results of an OMB Circular A-76 study currently being conducted or if a separate contract for these buildings is awarded after March 1, 1989. In those circumstances, the contractor would be paid the rate listed during ROTC training.

The above information was delineated at the top of the schedule in the solicitation and also in response to a pre-proposal question, the answer to which was sent to all offerors. Therefore, offerors should have been aware of the purpose for the zero quantities in the line items. We find no merit to this basis of protest.

The protest is denied.


for James F. Hinchman
General Counsel