



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Data Express
File: B-234468
Date: May 25, 1989

DIGEST

1. Non-receipt of amendment by an offeror does not affect validity of award to another offeror where full and open competition and reasonable prices are obtained and record does not indicate that agency attempted to exclude offeror from the competition.
2. Where offeror failed to revive expired offer by acknowledging amendment or otherwise indicating continuing interest in procurement, contracting officer properly rejected the offer.

DECISION

Data Express protests the rejection of its offer under request for proposals (RFP) No. N00123-88-R-0150, issued by the Naval Regional Contracting Center Detachment, Long Beach, California, for 97 modems to support the Naval Electronic Systems Engineering Center in Vallejo, California. The Navy rejected Data Express' offer because the protester failed to acknowledge an amendment to the RFP. Data Express contends that it never received the amendment. We deny the protest.

The RFP, which was issued on March 1, 1988, listed a number of physical and functional characteristics that the modems were required to meet, including dimensions and weight. The solicitation also required that the modems be compatible with the Engineering Center's existing AN/FCC-100 multiplexer configuration. The RFP advised that award would be made to the responsible offeror submitting the lowest priced, technically acceptable offer and cautioned that award might be made without discussions. The closing date was set for April 4.

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Data Express submitted an offer on March 23. On March 25, 2 days later, the agency issued amendment No. 0001 to the RFP, which extended the closing date indefinitely pending revision of the specifications.

On November 10, the Navy issued amendment No. 0002, which revised the dimensions of the modems and established a new closing date of November 17. Offerors were advised that a failure to acknowledge the amendment could result in rejection of their offers.

The Navy received eight offers in response to the solicitation, two of which acknowledged the amendments. The agency rejected the protester's offer because it failed to acknowledge amendment No. 0002. Although it considered the offer unacceptable, the agency nevertheless conducted a technical evaluation of all the offers received. Based on this evaluation, it also concluded that the protester's offer was technically unacceptable because its modem was not compatible with the existing multiplexer configuration.

The Navy awarded a contract to Paradyne Corporation on February 3, as the only firm acknowledging amendment No. 0002 whose offer was acceptable from a technical standpoint.

Data Express complains that it never received the amendment in question.

As a general rule, the risk of non-receipt of an amendment rests with the offeror. Shemya Constructors, B-232928.2, Feb. 2, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 108. The fact that one offeror does not receive an amendment and is thereby precluded from receiving an award has no effect on the validity of the award to another offeror where full and open competition and reasonable prices are obtained and the record does not show a deliberate attempt by the contracting agency to exclude the offeror from the competition. CDA Inc., B-224971, Feb. 13, 1987, 87-1 CPD ¶ 163.

Here, there is no evidence that the agency deliberately attempted to exclude the protester from the competition. The Navy has furnished us with a copy of the mailing list for the solicitation, which indicates that copies of the amendment were mailed to all of the companies on the list, including Data Express, on November 10. Furthermore, the protester has presented no evidence that any offeror other than itself failed to receive the amendment or that the prices obtained were not reasonable. Two offers that acknowledged the amendments were in fact received, and award was made to the lower priced of the two. Under such

circumstances, we believe that full and open competition was achieved. Shemya Constructors, B-232928.2, 68 Comp. Gen. _____, supra.

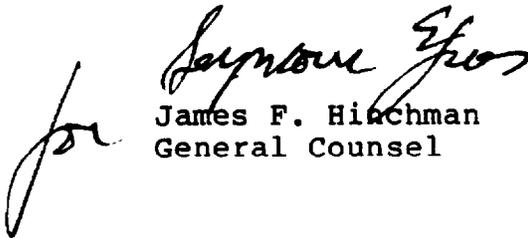
The protester further argues that its failure to acknowledge amendment No. 0002 was, in any event, irrelevant since its modems, as originally proposed, complied with the revised dimensions set forth in amendment No. 0002.

The agency contends that even if the protester's unit meets the dimensions, as amended, by failing to acknowledge the amendment, Data Express failed to revive its offer, which had by then expired. According to the agency, Data Express had agreed to hold its offer open for 60 days from the date for receipt of offers specified in the original solicitation, i.e., April 4; the offer had therefore expired by its own terms on June 4. The Navy argues that under the circumstances, since the protester did not respond with an amendment acknowledgment by the revised November 7 closing date, it was reasonable for the contracting officer to assume that the protester no longer remained interested in the procurement and to reject the offer.

We agree. Since the protester's offer had expired by its own terms on June 4, it was no longer eligible for award. See Fred Rutledge, B-213474, Mar. 13, 1984, 84-1 CPD ¶ 297. In view of the fact that the protester did not respond to amendment No. 0002 or make any other effort to extend its offer during the allotted time, the offer was properly rejected and the agency was under no duty to otherwise seek an extension from Data Express. Id.

Since we have concluded that the protester's offer was properly rejected, we need not address the protester's argument that its modems were technically acceptable.

The protest is denied.


James F. Hirschman
General Counsel