

Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Goodway Graphics of Virginia, Inc.

File: B-236386

Date: November 22, 1989

DIGEST

1. Protest that oral advice of agency official resulted in firm failing to submit timely proposal is denied, where such oral advice was correct in terms of advising protester of extended proposal due date and, in any event, protester was not precluded by agency official's actions from earlier submitting its proposal.
2. Protest based upon alleged failure of offeror to receive amendment to request for proposals is denied absent evidence that failure resulted from deliberate attempt on the part of the agency to exclude firm.
3. Agency reasonably determined to amend rather than cancel solicitation after receipt of initial proposals where changes to be made were de minimis in nature. Moreover, protester was reasonably excluded from submission of revised proposals where firm did not timely submit initial proposal for reasons unrelated to the changes made by amendment.

DECISION

Goodway Graphics of Virginia, Inc., protests the refusal of the Agency for International Development (AID) to accept its late offer under request for proposals (RFP) No. AID/MS-89-016, issued by AID for various offset printing and bindery services. Goodway argues that the agency improperly failed to provide it with an amendment to the RFP, thereby preventing it from timely submitting its offer.

We deny the protest.

The RFP was issued on June 8, 1989, and had an original closing date of July 10. On June 20, AID received a letter from a prospective offeror raising various technical concerns as to the RFP in its original form, and AID

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concluded that these concerns needed to be addressed. Because of time constraints, however, the agency, rather than issue a substantive amendment, instead issued on July 5 amendment No. 0001 which extended the closing date to July 21, thereby providing AID contracting personnel an opportunity to draft a comprehensive amendment covering all of the technical issues raised.

On July 10, Goodway's vice president hand carried the firm's proposal to the AID contracting office. Upon his arrival, he was told by the contract negotiator that the closing date had been extended to July 21 to allow AID to make the necessary changes to the RFP. The contract negotiator also stated to Goodway's vice president that he should keep the firm's proposal so that Goodway could respond to the changes which were to be incorporated. The contract negotiator additionally asked Goodway's vice president whether the firm had received amendment No. 0001, and he replied that it had not.

Thereafter, on July 11, Goodway's vice president telephoned the contract negotiator, stating that the firm had received amendment No. 0001. During that same conversation, Goodway's vice president also requested that a copy of amendment No. 0002 be telefaxed to the firm when it was ready. The contract negotiator declined Goodway's request on grounds that the amendment would be too lengthy. Subsequently, on July 12, AID mailed out amendment No. 0002 and telephoned Goodway's vice president to inform him that the amendment had been mailed.

By July 21, the revised closing date for submission of proposals, AID had received no proposal from Goodway. Subsequently, on July 31, a representative of Goodway telephoned the AID contract negotiator to inquire about the "new closing date." After a number of conversations between representatives of Goodway and the contract negotiator, it became apparent that Goodway had mistaken an amendment No. 0001 to another solicitation for amendment No. 0001 of the subject RFP. The amendment for the other solicitation had set August 1 as the closing date, and Goodway had believed its proposal was due at that time. AID declined to accept Goodway's proposal, and this protest followed. Subsequent to the filing of the this protest, AID issued a third amendment to the RFP setting the closing date for the submission of proposal revisions for August 22. Amendment No. 0003 made minor revisions to the RFP, correcting certain specification errors and deleting some 5 of a total of 71 line items. This amendment was sent only to those firms who had previously submitted timely initial proposals.

Goodway first alleges that AID acted improperly in not accepting its proposal when the firm tendered it initially on July 10. Specifically, Goodway argues that the affirmative act of the contract negotiator in telling its vice president on July 10 that he should "keep" its proposal in order to revise it in light of the changes which were to be made by amendment No. 0002, was the cause of the firm's proposal being late. In this regard, Goodway asserts that it would have otherwise submitted its proposal in a timely fashion, and may or may not have made revisions to it in light of amendment No. 0002.

We disagree. Here, the record shows clearly that Goodway's vice president was not required by the government to leave the contract offices with the firm's proposal but, rather, was merely following the advice of the contract negotiator to submit it at a later time. In this case, the oral advice of the contract negotiator was correct in that she informed Goodway's vice president of the correct new date for the submission of proposals and informed him as well of the possible need to revise the firm's submission. In the final analysis, we think that Goodway could have, but decided not to submit its proposal on July 10. We therefore deny this ground of Goodway's protest.

Goodway next argues that the agency also acted improperly by not mailing it a copy of amendment No. 0001. In this respect, Goodway alleges that AID failed to fulfill an affirmative duty to provide the firm with the amendment, thereby precluding it from timely submitting its proposal.

An offeror, however, bears the risk of not receiving a solicitation amendment unless it is shown that the contracting agency made a deliberate effort to exclude the firm from competing, or that the agency failed to furnish the amendment inadvertently after the firm availed itself of every reasonable opportunity to obtain the amendment. See American Sein-Pro, B-231823, Aug. 31, 1988, 88-2 CPD ¶ 209.

Here, Goodway has not alleged that the agency acted deliberately to exclude it from the competition, nor has the firm shown that it made an attempt to obtain amendment No. 0001. Cf. Catamount Constr., Inc., B-225498, Apr. 3, 1987, 87-1 CPD ¶ 374. The record does show that the firm had received actual verbal notice of the extended proposal due date. We therefore deny this basis of protest.

Finally, Goodway alleges that it should have been afforded an opportunity to submit its proposal after the agency issued amendment No.0003 and requested revised proposals. In this regard, Goodway argues that as of the issuance of

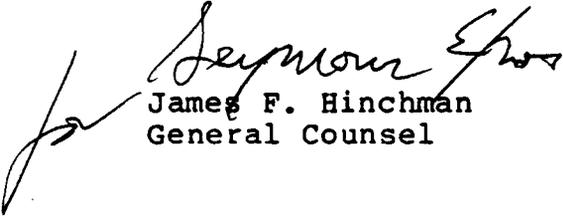
amendment No. 0003, the agency had not evaluated proposals. Goodway thus suggests that it should have been allowed to submit a proposal since it would not have been prejudicial to the other offerors. In the alternative, Goodway alleges that the issuance of amendment No. 0003 shows that the agency needed to correct an otherwise deficient RFP, and, thus, the more appropriate course of action would have been to cancel the RFP and resolicit.

The agency responds that the changes made by amendment No. 0003 were not so substantial as to warrant cancellation and resolicitation. In this regard, AID points out that only 5 of the 71 line items were affected. The agency also argues that it was not required to issue the amendment to Goodway since the changes which were made did not in any way relate to the firm's failure to submit an offer.

We agree with the agency. The Federal Acquisition Regulation (FAR) § 15.606(b)(2) (FAC 84-16) provides that where an agency discovers the need to amend a solicitation after receipt of proposals but before evaluation thereof, the amendment should only be provided to those firms who have responded to the RFP. That same section of the FAR at § 15.606(b)(4) further provides that where the change is so substantial that it warrants complete revision of the RFP, the solicitation should be canceled and reissued.

Here, we do not think that the changes made by amendment No. 0003 were so substantial that cancellation was required. In this connection, we note that an agency need only provide a reasonable basis for its decision as to whether cancellation or amendment of an RFP was appropriate. See PRC Gov't Information Sys., B-203731, Sept. 23, 1982, 82-2 CPD ¶ 261. AID has, in our opinion, provided a reasonable basis for its decision to amend rather than cancel, namely, that the changes were de minimis in nature. In any event, Goodway has not alleged that the reasons for its failure to submit its proposal were in any way related to the changes effected by amendment No. 0003.

We deny the protest.


James F. Hinchman
General Counsel