



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Stellar Manufacturing Company
File: B-245857
Date: January 27, 1992

Kenneth W. Bray for the protester,
Russell P. Spindler, Esq., Department of the Navy, for the
agency,
Franklin D. Jackson, Esq., and Barbara R. Timmerman, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of this decision.

DIGEST

An agency properly rejected a protester's offer to supply
calcification tablets when the offer did not contain a
sample of the tablets, as required by the solicitation.

DECISION

Stellar Manufacturing Company protests the rejection of its
offer under request for proposals (RFP) No. N60530-91-R-
0363, issued by the Naval Weapons Center for the supply of
515,000 calcification tablets and two options for the
purchase of 400,000 tablets each.

We deny the protest.

The agency issued the solicitation on July 19, 1991, and
established August 20, 3:30 p.m. as the date and time for
receipt of initial proposals. The solicitation essentially
provided for award of a firm fixed price supply contract to
the low, technically acceptable offeror. The solicitation
required that each offer include a price proposal and
samples of the proffered tablets. The solicitation advised
that award would only be made to an offeror providing sample
tablets that met the specifications outlined in the
statement of work. Thus, a test of the sample tablets was
essential to the determination of whether or not the offer
was technically acceptable.

Stellar states that on August 19 it sent three packages to
the contract specialist. The first package, sent via
Federal Express, contained the price proposal. The
protester explains that it did not send the sample tablets
at this time because it did not yet have the tablets in its

possession. Later, that same day, the protester asserts that it sent, via UPS, the second and third packages: one containing a duplicate price proposal and the other containing sample tablets.

According to the contract specialist, because she had several prior telephone conversations with Stellar pertaining to the solicitation, she became concerned when, on the closing date, as the closing time approached, she still had not received the protester's offer. She called the Naval Weapons Center's mail control point and discovered that a package had been received from the protester but was deposited with the miscellaneous mail due to the omission of a building number with the address. The contract specialist states that upon picking up the Federal Express package from the mailroom, she noticed that the letter-sized envelope was too small to contain the price proposal and samples and inquired whether any additional packages had been received from the protester. The mailroom informed her that they had not received anything from the protester other than the letter-sized package.

The next day, the contract specialist was advised that a second package from the protester had arrived at mail control on August 20. Although the exact time of receipt is unknown, the agency states that this package must have been received after the 3:30 closing time since there was no record of its receipt at the time the contract specialist picked up the protester's first package. The specialist states that the contents of the second package consisted of exactly the same materials as were enclosed in the first. Both packages contained price proposals but no samples. According to the agency, it never received the third package Stellar claims to have sent.

By letter dated September 5, the Navy informed Stellar that the agency had received and evaluated the protester's proposal and found it unacceptable due to the failure to submit sample tablets. The agency awarded the contract to Klas-Kem, Inc. on September 6 for a price that was approximately 8.9 cents per unit higher than the price proposed by Stellar. In response, by letter of September 17, Stellar filed a protest with our Office stating that it had, indeed, submitted sample tablets.

Stellar argues that second package arrived at the Naval Weapons Center prior to closing. The protester contends that tracking documents from the commercial carrier show that this package did not contain a copy of the price proposal, but actually contained the sample tablets. Further, the protester asserts that the agency is responsible for the absence of the sample tablets because

B-245857

the agency either lost the samples or intentionally withheld them from the procurement process. Finally, the protester alleges that the agency compromised some of its official internal documents for the purpose of misleading GAO.

The RFP advised offerors of the form that the proposals must take and of the specific requirements that the sample tablets must meet. Since the agency structured the solicitation to permit award on the basis of initial proposals, each offer should have contained the offeror's best price along with sample tablets that would be acceptable under the specifications. See Watson Industries, Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371. If, as apparently is the case here, the second package did not contain the sample tablets, rejection of Stellar's offer was proper since the initial proposal was so deficient that, in essence, no meaningful offer was submitted. See Marine Hydraulics International, Inc., B-240034, Oct. 17, 1990, 90-2 CPD ¶ 308. Further, we cannot, consistent with the clause governing late proposals, allow an offeror to cure omissions after the time set for receipt of initial proposals.

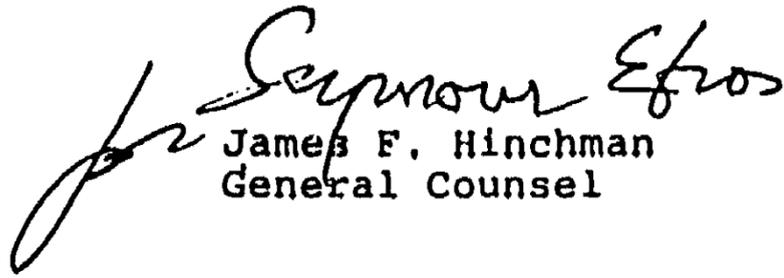
We need not consider whether Stellar's second package was timely received since even if we assume that the package arrived prior to the closing time, there is no evidence that the package actually contained the sample tablets. The only proof Stellar has submitted is a copy of a shipping receipt which contains the handwritten words "Letter - Samples" in the space where the customer is allowed to describe the contents of the package. We do not view this as adequate to establish the proposition for which it is offered, particularly since Stellar has made no effort to track the third package that it purports to have sent.

The protester also alleges that the agency intentionally withheld the samples from the procurement process and inappropriately used official internal documents to mislead GAO. Since agency procurement officers are presumed to act in good faith, any contention that the agency acted with prejudice to exclude a protester from a contract award must be supported by convincing evidence that the officers had specific and malicious intent to harm the protester. Micronics, Inc., B-234034, May 3, 1989, 89-1 CPD ¶ 420. Here, the record fails to disclose any evidence of a willful

B-245857

exclusion of the protester from the procurement. Stellar's allegations appear to be primarily based on inference and supposition, and, thus, are insufficient. See id.

Accordingly, this protest is denied.

 Seymour Efron
James F. Hinchman
General Counsel

B-245857