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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## **Decision**

**Matter of:** Latvian Connection, LLC

**File:** B-411489

**Date:** August 11, 2015

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Keven L. Barnes, Latvian Connection, LLC, for the protester.  
CPT Ahsan M. Nasar, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protester's contention that it did not have a reasonable amount of time to respond to a solicitation amendment is sustained where the record shows that the protester did not have constructive notice of the issuance of the amendment, and did not learn of the amendment until less than 2 business days prior to the revised closing date.

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### **DECISION**

Latvian Connection, LLC, of Healdsburg, California, a small business, challenges the terms of request for proposals (RFP) No. W912D1-15-R-0014, issued by the Department of the Army to provide and install sunshade canopies at various sites in Kuwait. Specifically, the protester argues that the agency did not provide it adequate time to respond to an amendment to the RFP.

We sustain the protest.

### **BACKGROUND**

The Army issued the solicitation on March 20, 2015, to procure sunshade canopies of various dimensions. The RFP anticipates the award of a fixed-price contract with a cost-reimbursement contract line item number (CLIN) for Defense Base Act

insurance.<sup>1</sup> RFP at 6. The anticipated value of the contract exceeds \$25,000. Email from Agency to GAO (Aug. 4, 2015).

As relevant here, the RFP provides that “all offerors must submit an electronic proposal to the Contracting Officer and Contract Specialist.” RFP at 57. The initial solicitation listed an email address for the contract specialist in three places in the solicitation, including “Contracting Office Points of Contact.” Id. at 40, 54, 56. The initial solicitation also included an incorrect version of the contract specialist’s email in a section regarding the site visit.<sup>2</sup> Id. at 40. Before proposals were due, the protester sent the agency a question via email about a Defense Federal Acquisition Regulations Supplement (DFARS) § 252.236-7001 contract drawing. AR, Tab 8, Email from Latvian Connection to the Army (Apr. 15, 2015). This email was correctly addressed to the contracting officer and the contract specialist. Id.

Latvian Connection submitted its initial proposal on April 20. This proposal was sent to the email address listed for the original contracting officer, and was also sent to the incorrect address for the contract specialist. AR, Tab 10, Email from Latvian Connection of Initial Proposal to Army (April 20, 2015). As the agency explains, the original contracting officer was away on temporary duty at the time for receipt of proposals, and was therefore not aware that Latvian Connection had submitted a proposal. AR at 2. The contract specialist did not receive the proposal because of the error in the email address used by the protester. Id.

Shortly before proposals were due, the record shows that on April 11, the agency assigned a new contracting officer to the procurement; the agency, however, did not update the solicitation to reflect the identity of the new contracting officer until April 28. Id. at 3 n.1. On April 28, the agency issued RFP amendment No. 4, which set forth the revised dimensions of the sunshades, provided revised instructions for the submission of proposals, provided contact information for the new contracting officer, and established a new deadline for the submission of proposals of 3 p.m. Kuwait Local Time on May 4. AR, Tab 11, RFP amend. No. 4 (Apr. 28, 2015). The agency states that although it provided copies of amendment No. 4 to the offerors that submitted initial proposals, the agency did not provide a copy to Latvian Connection. AR at 4. The agency explains that it did not provide a copy of the

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<sup>1</sup> While the agency states that it issued the original solicitation and amendments using Federal Acquisition Regulation (FAR) part 13 simplified acquisition procedures, and that its actions were consistent with such procedures, the agency acknowledges that the solicitation was silent as to whether it followed FAR part 13 or part 15 procedures. Agency Report (AR) at 8.

<sup>2</sup> The error was a second period in the email address, which resulted in an address similar to the following: John..A.Doe.civ@mail.mil.

amendment to Latvian Connection because it was not aware that the protester had submitted a proposal. The agency explains it was not aware because Latvian Connection's initial proposal was sent to the incorrect address for the contract specialist, and because the original contracting officer was away on temporary duty at the time the proposal was submitted and was not aware that he had received it. AR at 4.

The agency also posted RFP amendment No. 4 on the Army Single Face to Industry (ASFI) website on April 28. AR, Tab 13, Affidavit of Contract Specialist (May 28, 2015). The protester states that it became aware of amendment No. 4 on May 2 (Saturday)--two days before proposals were due on Monday, May 4--from the posting on the ASFI website. Protester's Email to GAO (July 5, 2015) at 3; Protester's Email to GAO (Aug. 3, 2014).

On Sunday, May 3, Latvian Connection submitted its protest to our Office, complaining that the Army had failed to advise it of the change to the solicitation, and failed to provide sufficient time for a response. The protest was docketed by our Office on Monday, May 4, at 8:30 a.m., Eastern Time--which was 30 minutes after the specified closing time of 3:00 p.m., local Kuwait time.<sup>3</sup>

On Monday, May 4, the protester submitted its revised proposal to the original contracting officer (rather than the new contracting officer) and to the contract specialist, using the same incorrect email address for this individual that had been used to submit the protester's initial proposal. AR, Tab 15, Email from Latvian Connection to Army of Revised Proposal (May 4, 2015). The previous contracting officer received Latvian Connection's proposal at 3:02 p.m., Kuwait local time.

The Army requested that our Office dismiss the protest on the grounds that Latvian Connection was not an interested party because it had not submitted a proposal in response to the solicitation. Army Request for Dismissal (May 13, 2015). Latvian Connection responded that it submitted its initial proposal on April 20, and provided documentation reflecting its submission. Latvian Connection Response to Request for Summary Dismissal (May 15, 2015). Our Office denied the agency's request for dismissal and asked the agency to submit a report that addressed the merits of the protest. GAO Denial of Agency Request for Summary Dismissal (May 19, 2015).

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<sup>3</sup> Kuwait is located in the Arabia time zone, which is 7 hours ahead of the Eastern Time zone. AR at 8.

## DISCUSSION

Latvian Connection argues that it was not afforded sufficient time in which to respond to amendment No. 4, specifically the requirement to submit a new proposal addressing the revised sunshade canopy dimensions. Protest at 2; Protester's Comments at 12. Latvian Connection argues that its protest is timely because it learned of amendment No. 4 on May 2, and filed a protest with our Office within less than one business day. The protester also argues that the issuance of amendment No. 4 was improper because the Army failed to restrict the procurement to the offerors that submitted initial proposals, as required by FAR § 15.206. For the reasons discussed below, we conclude that the protester was not provided a reasonable amount of time to respond to RFP amendment No. 4, and we sustain the protest on this basis.

The Army first argues that the protest is untimely because it was not filed prior to the revised closing time of May 4 at 3:00 p.m., Kuwait local time--which was 8:00 a.m., Eastern Time. AR at 8. The Army notes that Latvian Connection's protest was time/date stamped by our Office on May 4 at 8:30 a.m., Eastern Time, which was 30 minutes after the specified closing time of 3:00 p.m., local Kuwait time. Id. For the reasons discussed below, we conclude that the protest is timely.

The Army is correct that our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). This rule includes protests that challenge alleged improprieties that did not exist in the initial solicitation but which are subsequently incorporated into it; in such cases, the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. Id.; see Cessna Aircraft Co., B-261953.5, Feb. 5, 1996, 96-1 CPD ¶ 132 at 16. In this respect, our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

The Army is also correct that our Regulations provide that a document, including a protest, is considered filed "on a particular day when it is received by GAO by 5:30 p.m., Eastern Time, on that day." 4 C.F.R. § 21.0(f). Further, our Office has explained that a document filed after 5:30 p.m. Eastern Time, on a particular day, is considered filed at 8:30 a.m., Eastern Time, the next day our Office is open. Guam Shipyard, B-294287, Sept. 16, 2004, 2004 CPD ¶ 181 at 3. For this reason, Latvian Connection's protest, which was submitted to our Office via email on Sunday, May 3, was considered filed at 8:30 a.m., Eastern Time, on Monday, May 4.

We nonetheless conclude that the protest was timely filed. The Army does not dispute the protester's representation that it received actual knowledge of the

amendment after our Office closed on Friday, May 1 (at 5:30 p.m., Eastern Time). Because our Office was closed when Latvian Connection learned of amendment No. 4, and because the solicitation's closing date was prior to our Office reopening on the following Monday (May 4, 8:30 a.m., Eastern Time), it was impossible for the protester to file its protest prior to the time for receipt of revised proposals. Under these circumstances, where the agency's actions preclude the possibility of filing a timely challenge to the terms of a solicitation, our Office has held that the timeliness rule of 4 C.F.R. § 21.2(a)(1), which requires protests to be filed prior to the time for receipt of proposals, does not apply; instead, the 10-day rule of 4 C.F.R. § 21.2(a)(2) applies. Immediate Systems Resources, Inc., B-292856, Dec. 9, 2003, 2003 CPD ¶ 227 at 4; Morrison Knudsen Corp., B-247160, Jan. 7, 1992, 92-1 CPD ¶ 35 at 2. Since Latvian Connection's protest was filed 2 days after it became aware of its basis of protest, in this case the short response time allowed by amendment No. 4, we find that the protest is timely.

For the record, we also disagree with the Army's argument that the protester had constructive knowledge of amendment No. 4 as of April 28, the date the agency posted amendment No. 4 on the AFSI website. The AFSI website is not a government-wide point of entry (GPE) designated for the publication of solicitations. Instead, FedBizOpps has been designated as the GPE--that is, the single point where government business opportunities greater than \$25,000 (such as the solicitation here), including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR §§ 5.101, 5.101(a)(1), 5.102.<sup>4</sup> While offerors are charged with constructive notice of procurement actions published on the GPE, Latvian Connection did not have constructive notice in this instance because AFSI is not the GPE. See DBI Waste Sys., Inc., B-400687, B-400687.2, Jan. 12, 2009, 2009 CPD ¶ 15 at 2.

We next consider whether Latvian Connection was afforded sufficient time in which to prepare a proposal in response to amendment No. 4. The Competition in Contracting Act of 1984 generally requires contracting agencies to obtain full and open competition through the use of competitive procedures, 10 U.S.C. § 2304(a)(1)(A), the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. Kendall Healthcare Prods. Co., B-289381, Feb. 19, 2002, 2002 CPD ¶ 42 at 6. In pursuit of these goals, a contracting agency must use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. Id. Additionally, agencies must provide potential offerors a reasonable opportunity to respond. FAR §§ 5.203(b), 13.003(h)(2); see Sabreliner Corp., B-288030, B-288030.2, Sept. 13, 2001, 2001 CPD ¶ 170 at 6-7. What constitutes a

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<sup>4</sup> The Army does not argue in response to the protest that this solicitation was exempt from publication on the GPE.

reasonable opportunity to respond will depend on “the circumstances of the individual acquisition, such as complexity, commerciality, availability, and urgency.” FAR § 5.203(b).

As stated above, we find that the protester first became aware of amendment No. 4 on Saturday, May 2, when it spotted the amendment on the AFSl website. The protester states that Friday and Saturday are considered non-business days in Kuwait (where the protester’s representative was located), and that Sunday is considered a business day. Protester’s Email to GAO (Aug. 3, 2014). This means that the protester had less than 2 business days in which to respond to amendment No. 4, specifically to prepare a revised proposal addressing the new sunshade canopy dimensions.<sup>5</sup> Under these circumstances, we find that Latvian Connection was not provided sufficient time in which to submit a response to the amendment.<sup>6</sup> See Information Ventures, Inc., B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 4 (where a December 31, 2003, announcement of the intended award established a response period from potential sources of one-and-a-half business days (until January 5, 2004), we held that the agency did not provide a sufficient time in which to respond).

We next discuss whether Latvian Connection was prejudiced by the Army’s actions.<sup>7</sup> In this regard, the Army acknowledges that it did not notify Latvian Connection when it sent out an email containing a courtesy copy of amendment No. 4 to the original offerors on April 28. AR at 5. The agency argues, however, that Latvian Connection had constructive knowledge of amendment No. 4 by virtue of the fact that the agency posted it on the ASFI website that same day. AR at 5-6. Therefore, the agency contends that Latvian Connection was not prejudiced by the failure of the agency to send it the email that was sent to the original offerors. Id. at 9. Since as set forth above, we find that the protester had less than 2 business

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<sup>5</sup> The Army itself characterizes these revisions as “substantial.” AR at 3 n.2 (“Because of substantial changes to some required canopy dimensions in Amendment 0004, offerors that did not submit revised quotes in response to Amendment 0004 risked having their original quotes deemed nonresponsive . . . .”)

<sup>6</sup> The Army’s response to the protest did not specifically address whether the amount of time available to the protester, based on its actual knowledge of the amendment, was adequate to respond to RFP amendment. No. 4.

<sup>7</sup> Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

days to respond to this amendment, we conclude that the protester was prejudiced by the brief response time here.

The agency also argues that the protester “contributed” to its non-receipt of amendment No. 4 by incorrectly typing the contract specialist’s email address when it submitted its initial proposal. Id. at 5. As stated above, the Army failed to meet its obligation to publicize the issuance of RFP amendment No. 4 through the GPE. Thus, even if the protester contributed to the agency’s mistaken belief that the protester had not submitted an initial proposal, the protester could have received notice of the amendment through the GPE. For this reason, we conclude that any errors on the part of the protester concerning the email addresses used to transmit its initial proposal were superseded by the agency’s failure to properly publicize RFP amendment No. 4.<sup>8</sup>

Finally, Latvian Connection argues that the issuance of RFP amendment No. 4 was improper because the Army failed to restrict the procurement to the offerors that submitted initial proposals, as required by FAR § 15.206. Protest at 1. As stated above the solicitation did not specifically address whether the competition would follow FAR part 13 or part 15 procedures. AR at 8. To the extent the protester argues that the agency should have specified that FAR part 15 procedures applied, this was an apparent solicitation impropriety that, to be timely, should have been challenged before initial proposals were due, on April 20. See 4 C.F.R. § 21.2(a)(1). In any event the Army states that it did not receive proposals from any offerors that had not already submitted a proposal in response to the original solicitation. AR at 9; Declaration of Contract Specialist (May 28, 2015) at 2. We therefore find no merit to this aspect of the protest.

## CONCLUSION AND RECOMMENDATION

We find that the Army did not provide Latvian Connection a reasonable time in which to respond to RFP amendment No. 4. We find that the agency’s actions here prejudiced the protester, and contributed to the late receipt of the protester’s proposal. We recommend that the agency reissue amendment No. 4, with sufficient time for offerors to respond, and that the agency evaluate all timely proposals. We

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<sup>8</sup> Although the protester submitted a proposal in response to RFP amendment No. 4, this proposal was not timely received by the Army. Here too, the agency’s failure to provide Latvian Connection with a copy of the amendment, or to publicize the amendment on the GPE, resulted in the protester lacking an adequate amount of time to prepare its proposal. For this reason, the fact that Latvian Connection submitted a late proposal in response to RFP amendment No. 4 does not affect our conclusion that the Army’s actions here were improper, and that they prejudiced the protester.

also recommend that the agency reimburse Latvian Connection its costs associated with filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at § 21.8(f).

The protest is sustained

Susan A. Poling  
General Counsel