



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: CFS-INC, JV

File: B-401809.2

Date: March 31, 2010

Terrence M. O'Connor, Esq., Seth C. Berenzweig, Esq., and Stephanie D. Wilson, Esq., Albo & Oblon, LLP, for the protester.
Jackson T. Reams, Esq., General Services Administration, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where severe snowstorms closed the government in Washington D.C. on a day when proposals were scheduled to be received, the agency reasonably received proposals on the next day that the Government was open and resumed its normal processes, as authorized by Federal Acquisition Regulation § 52.212-1(f)(4) (Instructions to Offerors--Commercial Items (June 2008)); the fact that a delayed arrival/unscheduled leave policy for government employees was authorized for that day did not mean normal government processes had not resumed.

DECISION

CFS-INC, JV (CFS) protests the rejection of its proposal as late under request for proposals (RFP) No. GS-11P-09-ZGC-0022 by the General Services Administration (GSA), for commercial facilities management services.

We deny the protest.

The RFP originally provided for proposals to be submitted in response to the solicitation on September 3, 2009. The solicitation contained the following provision:

NOTE: Per the Federal Acquisition Regulation, if an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the

solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

RFP at 8. Federal Acquisition Regulation (FAR) § 52.212-1(f)(4), Instructions to Offerors--Commercial Items (June 2008), which is identical to the above-quoted language as well as to FAR § 15.208(d), was also incorporated into the RFP. RFP at 19.

The agency issued amendment No. 10 to the RFP on January 27, 2010, which extended the proposal due date until February 9 at 2:00 p.m. Eastern Time. Amendment No 12, issued on January 29, affirmed that the proposal due date was February 9 at 2:00 p.m.. Proposals were to be submitted to GSA's Triangle Service Center, 409 12th Street, SW, Room 710, Washington, D.C. 20024. RFP amend. 2.

Due to major winter storms in the Washington D.C. area on February 5 and 6 and again on February 9 and 10, federal agencies in the Washington D.C. area were closed from Monday, February 8 through Thursday, February 11. On February 9, several offerors, including CFS, attempted to hand deliver their proposals to the Triangle Service Center in Washington, D.C., but could not because the agency was closed. On Friday, February 12, federal agencies in Washington D.C. reopened, but Federal employees were allowed to arrive for work up to 2 hours later than they would normally arrive, and employees who could not report for work were allowed to take unscheduled leave. OPM Federal Government Archived Operating Status in the Washington, D.C. Area (Feb. 11, 2010).¹

On February 12, when GSA reopened, the contracting officer determined that under FAR § 52.212-1(f)(4)--the provision included in the RFP--the due date for receipt of proposals was extended from February 9 at 2 p.m. to February 12, at 2 p.m., "because GSA was open for business and ready to accept bids well before 2 p.m. on February 12, 2010." Contracting Officer's Statement at 2. Multiple proposals were submitted by the February 12 closing time. The protester submitted its proposal on February 12, at 2:24 p.m, and it was rejected as late. This protest followed.

CFS contends that the due date for proposals should have been extended until 2 p.m. on Tuesday, February 16, because this was the first day that normal government processes resumed.² Therefore, the protester argues that the contracting officer determination to reject CFS's proposal as late was in error. The protester essentially contends that "normal government processes" could not be said to have resumed on

¹ <http://www.opm.gov/status/pastStatus.aspx?q=275>.

² Monday, February 15, was a federal holiday.

a day when the federal agency was operating under a 2-hour delayed arrival/unscheduled leave policy.

We agree with the agency that normal Government processes resumed on February 12. The agency states it “went on with the pursuit of its normal business following a morning that permitted Federal employees some additional time to safely commute to work” and was able to accept proposals at 2 p.m. Agency Report at 6. Contrary to the protester’s allegations, the fact that Federal employees were allowed to delay arrival or take unscheduled leave does not mean that the Government had not resumed its normal processes. In fact, procedures of the Office of Personnel Management recognize that situations that allow for delayed arrival or unscheduled leave are different from the situations where the “Federal agencies are closed.” OPM Washington, D.C. Area Dismissal or Closure Procedures (Nov. 2009) at 11.³

We therefore find that the agency reasonably rejected CFS’s proposal as late because it was received after 2 p.m. on “the first work day on which normal Government processes resume[d].”

The protest is denied.

Lynn H. Gibson
Acting General Counsel

³ <https://www.opm.gov/oca/compmemo/dismissal.pdf>.