



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

## Decision

**Matter of:** Dell Services Federal Government, Inc.

**File:** B-405244; B-405244.2

**Date:** September 30, 2011

---

William L. Walsh, Jr., Esq., J. Scott Hommer, III, Esq., Justin J. Wortman, Esq., and George W. Wyatt, Esq., Venable LLP, for the protester.  
James P. Winthrop, Esq., Department of the Navy, Naval Supply Systems Command, for the agency.  
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest alleging that agency failed to provide the protester with effective notice of a solicitation amendment is denied where the amendment was received by one of two points of contact identified in the protester's proposal.

---

### DECISION

Dell Services Federal Government, Inc., protests its preclusion from competition for award under request for proposals (RFP) No. N00189-11-R-0002, issued by the Department of the Navy, Naval Supply Systems Command, for submarine technical support.

We deny the protest.

### BACKGROUND

On March 9, 2011, the agency issued the RFP via the Federal Business Opportunities (FedBizOpps) website for the procurement of submarine engineering, logistics, and technical support services for the Naval Ship Support Activity in Norfolk, Virginia. The agency subsequently issued three amendments to the RFP prior to the RFP's initial closing date. These amendments were also issued via FedBizOpps, and modified a number of RFP clauses.

Three offerors, including Dell, submitted proposals prior to the initial closing date of the solicitation. Following receipt of the proposals, the contracting specialist noted

that the proposals' overall costs were significantly lower than the independent government estimate for the contract. In examining this discrepancy, the contracting specialist discovered an error in the estimated level of effort labor hours provided in the RFP. The error originated from a clerical mistake and resulted in the understatement of the estimated labor hours for the contract by two-thirds.

To correct the clerical error and solicit accurate cost proposals from the offerors, the agency issued amendment 0004 to the RFP on May 13, which set a closing time for revised cost proposals of 4:00 p.m. on May 23. The agency transmitted the amendment by e-mail directly to the three offerors that had submitted proposals in response to the RFP. As relevant here, the agency sent the amendment via e-mail to the two points of contact identified in the Dell proposal cover letter: Dell's contracts director and senior contracts administrator. Shortly after transmitting the amendment, the contracting specialist received an e-mail response indicating that the message to the contracts administrator could not be delivered. Approximately three hours later, the contracting specialist received a "read receipt"<sup>1</sup> relating to the e-mail sent to Dell's contracts director, and was satisfied that Dell had therefore received the amendment.

On the morning of May 23, the day revised proposals were due, the contracting specialist contacted all offerors by phone to inquire about the status of their revised cost proposals and to remind them of the 4:00 p.m. closing time. Specifically, the contracting specialist's call sheet reflects that he spoke with Dell's contracts director at 11:10 a.m. on May 23, and that the contracts director "stated that his contracts administrator was working the revision [and the agency] would see it this afternoon." Agency Report (AR), Tab 17, Call Sheet, at 1. Dell, however, failed to submit its revised cost proposal by 4:00 p.m.

The next morning, on May 24, the contracting specialist sent an e-mail to Dell's contracts administrator to advise her that the agency had not received Dell's revised cost proposal. Dell's contracts administrator promptly replied and indicated that she had never received the May 13 e-mail transmitting amendment 0004 to the RFP. The contracting specialist then sent Dell's contracts administrator a copy of the amendment, and advised the contracts administrator that he had spoken to Dell's contracts director the previous morning, and had been assured that Dell was working on its revised cost proposal. Dell's contracts administrator next called the agency on May 25 to ask whether Dell could submit a late revised cost proposal, and was informed by the agency that any submission would be considered untimely and

---

<sup>1</sup> The agency's contract specialist sent the e-mail with the amendment to Dell's listed points of contact. In so doing, he used a "read receipt" tracking function. This function provides for the sender of an e-mail to receive confirmation of the receiver having opened the e-mail message.

would not be accepted. Dell filed an agency-level protest on June 2, which was denied by the agency on June 16. This protest followed on June 24.

## DISCUSSION

Dell alleges that the agency failed to use reasonable procedures to disseminate amendment 0004 to the RFP and treated the offerors unequally. Dell argues that the agency should allow Dell to submit a revised cost proposal and remain in the competition. The agency responds that it utilized reasonable procedures in disseminating the amendment and that the procedures were effective. Accordingly, the agency argues that its actions were not the cause of Dell's failure to submit a revised price proposal. We agree with the agency.

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) (2006), both 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 has the affirmative obligation to use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. Concurrent with the agency's obligations in this regard, prospective contractors must avail themselves of every reasonable opportunity to obtain the solicitation documents. Laboratory Sys. Servs., Inc., B-258883, Feb. 15, 1995, 95-1 CPD ¶ 90 at 2. Unless the record shows that the contracting agency made a deliberate effort to exclude the firm from competing or that the agency failed to follow reasonable established procedures for distribution of amendments, the prospective contractor bears the risk of not receiving solicitation amendments. Air Quality Experts, Inc., B-256444, June 15, 1994, 94-1 CPD ¶ 374.

As an initial matter, throughout its protest, Dell seeks to shift the blame for its failure to submit a revised proposal to the agency by advancing several arguments challenging the agency's method of disseminating amendment 0004. Specifically, Dell argues that the agency's decision to issue the amendment by e-mail was unreasonable. According to Dell, the agency was required to post the amendment on FedBizOpps. Dell also takes issue with the agency's failure to ensure that Dell's contracts administrator received the amendment.

Dell's efforts to shift blame to the agency cannot overcome the fact that Dell's contracts director, the individual who signed, and was listed as a point of contact in Dell's initial proposal, timely received the amendment in question. In addition, Dell's contracts director advised the agency, before the due date for proposal revisions, that Dell's contracts administrator, the other point of contact listed in Dell's proposal, was working on Dell's revisions. He further advised that Dell intended to submit its revisions by the closing time. In our view, any blame for Dell's failure to

respond to the request for a revised proposal properly lies with Dell, not the agency. In any event, we address Dell's arguments in turn, finding each to be without merit.

Concerning the agency's decision to issue amendment 0004 by e-mail, Dell contends that the change in procedure from the first three amendments, issued via FedBizOpps, was unexpected and unreasonable. Dell contends that the offerors had no reason to expect that additional amendments would arrive by e-mail because the agency's course of dealing had established that FedBizOpps was the agency's chosen method for dissemination of amendments. Dell also argues that distributing the amendment by e-mail violated the Federal Acquisition Regulation (FAR) instruction that amendments "shall be issued to all offerors that have not been eliminated from the competition." FAR § 15.206(c). Dell considers it implicit in this provision that a competitive range determination must be made prior to changing the method for dissemination of amendments.<sup>2</sup>

In presenting these arguments Dell ignores the principle distinction between the first three amendments and amendment 0004. The first three amendments were issued prior to the initial closing date of the solicitation and were thus required to be available to all potentially responsible offerors.<sup>3</sup> In contrast, amendment 0004 was issued after the initial closing date and was not therefore required to be issued to all potential offerors via FedBizOpps; rather, it was required to be issued to all offerors remaining in the competition—that is—only to those firms that submitted timely proposals in response to the RFP. See FAR § 15.206(c). We see nothing unreasonable in the agency's decision to disseminate amendment 0004 via e-mail to the three firms that submitted timely proposals in response to the RFP.

---

<sup>2</sup> In the same vein, Dell asserts that the change in the solicitation's requirements set forth in amendment 0004 was so great that the agency was required by FAR § 15.206(e) to cancel the solicitation, and issue a new one. Based on our conclusion that amendment 0004 was effectively disseminated to Dell on May 13, this basis of protest represents an untimely challenge to an alleged solicitation impropriety that must be dismissed. Our Bid Protest Regulations specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2010). This rule includes challenges to alleged improprieties that do 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.

<sup>3</sup> As set forth in FAR § 15.206(b), the amendments were required to be issued to "all parties receiving the solicitation."

Regarding Dell's argument that the agency erred in failing to ensure that Dell's contracts administrator received amendment 0004 to the RFP, Dell alleges that the contracts administrator was the designated "primary" point of contact for the proposal, and that dissemination of the amendment to Dell's contracts director, who did not have day-to-day contact with the proposal team, was inappropriate. Dell further asserts that, upon receiving notice that the e-mail message was undeliverable, the contracting specialist should have immediately followed-up with Dell to ensure that the "correct" point of contact received the amendment. Dell states that, had the contracting specialist followed-up with Dell, or otherwise investigated the undeliverable e-mail message, he would have discovered that he had added an additional letter to the contracts administrator's e-mail address, resulting in the error. We disagree for several reasons.

First, Dell's proposal cover letter, signed by the contracts director, identified both the contracts director and the contracts administrator as "persons authorized to negotiate," and provided each individuals' full contact information. On the second page of the cover letter Dell stated that "[s]hould you have any questions regarding this submission, please contact [the contracts administrator]" and again provided the contracts administrator's e-mail address and telephone number.<sup>4</sup> Based on this record, we do not agree with Dell's premise that its proposal clearly designated the contracts administrator as the primary point of contact, or the only appropriate contact for all correspondence related to the RFP.

Second, our review of the record shows that the error in the e-mail address originated in Dell's proposal. Although the contact information for the contracts director and contracts administrator on the first page of the proposal cover letter appears correct, on the second page of the cover letter, where Dell identified the contracts administrator as the contact for "questions regarding this submission," the e-mail address is incorrect—i.e. the address is stated in exactly the same manner the contracting specialist used to address the e-mail message transmitting the amendment.

Furthermore, we disagree with Dell's theory that because it apparently intended to identify its contracts administrator as the primary point of contact, dissemination of the amendment to another listed point of contact could be considered ineffective. As explained above, prospective contractors must avail themselves of every reasonable opportunity to obtain the solicitation documents. Laboratory Sys. Servs., Inc., supra. Where a prospective contractor fails in this duty, we will not sustain its protest challenging the agency's failure to meet its solicitation dissemination obligations. Wind Gap Knitwear, Inc., B-276669, July 10, 1997, 97-2 CPD ¶ 14 at 3. In considering such situations, we consider whether the agency or the protester had the

---

<sup>4</sup> As further addressed below, we note that on the second page of the proposal cover letter, the protester mistyped the contracts administrator's e-mail address.

last clear opportunity to avoid the protester's being precluded from competing. Id. Here, one of two of Dell's points of contact for the RFP had actual receipt of the amendment on the morning it was issued, and was later reminded of the amendment's deadline by phone. In this context, the protester had every possible opportunity to submit a revised cost proposal and avoid being precluded from continuing in the competition.

Finally, Dell argues that the Navy treated it unequally by distributing the amendment to the other offerors' "primary points of contact." This argument is not supported by the record. The record shows that the agency attempted to send the amendment to all known contacts at each firm. Accordingly, with regard to the first offeror, the agency sent the amendment to seven individuals that had been copied on earlier e-mail inquiries from the firm concerning the RFP, and received four read receipts. AR, Tab 14. With regard to the second firm, the agency contacted the only individual for whom contact information had been provided, and received a read receipt and confirmation e-mail in response. Id., Tab 15. Concerning Dell, the agency addressed the e-mail message containing the amendment to the contracts administrator, and copied the other point of contact identified in the solicitation, the contracts director. Id., Tab 16. In response, the contracting specialist received notice of an undeliverable e-mail message concerning the contracts administrator, and a read receipt from the contracts director. Id. We do not consider these procedures to be unequal. Procuring agencies are required to treat all prospective contractors fairly and impartially, but they are not required to be treated exactly the same. FAR § 1.102-2(c)(3); INDUS Technology, Inc., B-297800.13, June 25, 2007, 2007 CPD ¶ 116 at 6.

In sum, our Office has reviewed the arguments presented by the protester and concludes that they are without merit. We see no evidence in the record to support Dell's arguments that the agency's method of dissemination of amendment 0004 was unreasonable or otherwise improper. Where a member of the protester's contracting team had actual receipt of the amendment, and the agency contracting specialist provided a specific reminder of the revised cost proposal's due date, the protester undoubtedly had the "last clear opportunity" to ensure that its revised cost proposal was timely submitted to the agency. See Wind Gap Knitwear, Inc., supra.

The protest is denied.

Lynn H. Gibson  
General Counsel