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**Comptroller General
of the United States**

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

Decision

Matter of: On-Site Environmental, Inc.; WRS Infrastructure & Environment, Inc.

File: B-294057; B-294057.2

Date: July 29, 2004

Lorenzo F. Exposito, Esq., and Jeniffer De Jesus, Esq., Powell Goldstein Frazer & Murphy, for the protesters.

Kenneth A. Redden, Esq., Environmental Protection Agency, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests that agency improperly rejected offers as late because lateness was due to amendment that rendered address for hand-carried offers ambiguous, is denied where solicitation clearly provided address for hand-carried offers and amendment cannot reasonably be read as revising delivery instructions.

DECISION

On-Site Environmental, Inc. and WRS Infrastructure & Environment, Inc. protest the rejection of their proposals under request for proposals (RFP) No. PR-HQ-04-10343, issued by the Environmental Protection Agency (EPA) for fast environmental cleanup services for hazardous substances/wastes/contaminants/materials and petroleum products/oil, for Puerto Rico and the U.S. Virgin Islands. On-Site and WRS contend that the late delivery of their offers was due to ambiguous solicitation instructions, and that their offers therefore should be considered.

We deny the protests.

The RFP, issued March 18, 2004, included addresses for submission of proposals. The first was under item 7 on SF 33, labeled "ISSUED BY," which included a parenthetical stating "(Hand Delivered/Overnight Commercial Carriers)," and the following address:

Environmental Protection Agency
Bid and Proposal Room, Ronald Reagan Building, 6th Floor
(3802R)
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

The second was under item 8, labeled “ADDRESS OFFER TO (if other than item 7),” which included a parenthetical stating “(U.S. Mail Only),” and the following address:

Environmental Protection Agency
Bid and Proposal Room, Ariel Rios Building (3802R)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RFP at 1. The agency issued three amendments, all of which included item 6, which was labeled “ISSUED BY” and included the 1200 Pennsylvania Avenue address. RFP, amend. 1, at 1; amend. 2, at 1; amend. 3, at 1. The amendments did not include any parenthetical information under item 6, or any other information relating to the place of offer delivery. The closing time for receipt of proposals was 4:00 p.m. on April 30.

On-Site’s proposal was to be delivered by a commercial overnight delivery service prior to 10:30 a.m. on April 30. It was addressed to the 1200 Pennsylvania Avenue address under item 8 of the RFP and under item 6 of the amendments. On-Site Protest at 4. The record shows that the commercial carrier unsuccessfully attempted delivery prior to 10:30 a.m. on Friday, April 30. *Id.* at 4-5. The protester’s and the commercial carrier’s representatives telephoned the contracting officer, who advised On-Site that it was using an incorrect address for delivery via commercial carrier. Agency Report (AR), Contracting Officer’s Statement, at 4; AR, Tab F, Memorandum for Record, at 1. On-Site then re-routed the delivery to EPA’s 1300 Pennsylvania Avenue address and the agency received On-Site’s proposal on Monday, May 3 at 9:29 a.m. Protest at 5; AR, Tab G, Memorandum for Record, Late Proposals, at 1.

WRS likewise sent its proposal via the same commercial carrier and addressed it to the 1200 Pennsylvania Avenue address. The commercial carrier unsuccessfully attempted delivery at approximately 6 a.m. on April 30. WRS Protest at 4. A representative of the commercial carrier notified WRS of the delivery problem and WRS arranged for an employee of a Washington D.C. law firm to pick up the proposal at the commercial carrier’s office and deliver it to EPA’s 1300 Pennsylvania Avenue address. *Id.* at 4-5. WRS’s proposal was received by the agency on April 30 at 4:25 p.m. AR, Tab G, Memorandum for Record, Late Proposals, at 1. By letter dated May 3, the agency notified On-Site and WRS that their proposals were received late and would not be considered for award.

On-Site and WRS contend that their proposals were received late due to a latent ambiguity in the RFP regarding the delivery address for hand-carried proposals. Specifically, the protesters assert that they interpreted the 1200 Pennsylvania Avenue

“ISSUED BY” address in item 6 of the amendments as superseding the 1300 Pennsylvania Avenue “ISSUED BY” address in item 7 of the solicitation’s cover page. Protesters’ Comments at 6. Noting that none of the amendments referenced the 1300 Pennsylvania Avenue address, and that the 1300 Pennsylvania Avenue “ISSUED BY” address in the original solicitation was the address for delivery of proposals by overnight commercial carriers, the protesters assert that they reasonably viewed the substitution of the 1200 Pennsylvania Avenue address into the “ISSUED BY” item in the amendments as providing that the delivery location for commercial carriers had been changed from 1300 to 1200 Pennsylvania Avenue.

As a general rule, offerors are responsible for delivering their proposals to the proper place at the proper time. CSLA, Inc., B-255177, Jan. 10, 1994, 94-1 CPD ¶ 63 at 2. A proposal delivered to an agency by a commercial carrier is considered to be hand-carried and, if it arrives late, can only be considered for award if it is shown that some government impropriety during or after receipt by the government was the sole or paramount cause of the late arrival at the designated place. Id. A solicitation ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Ashe Facility Servs., Inc., B-292218.3, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. To be reasonable, an interpretation must be consistent with the solicitation read as a whole and in a reasonable manner. Malkin Elecs. Int’l, Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586 at 4.

Here, the late receipt of the protesters’ proposals was not the result of a government impropriety, since the solicitation was not ambiguous as claimed. The solicitation as issued provided two addresses, one clearly identified for mailed offers and the other for offers either hand-carried or delivered by an overnight commercial carrier. Nothing in the amendments purported to revise or supersede these instructions regarding place of delivery. More specifically, while item 7 on the RFP cover page included a parenthetical identifying 1300 Pennsylvania Avenue as the address for hand delivery and delivery by overnight commercial carriers, the amendments did not include similar parenthetical information in item 6, and nowhere else expressly identified an address other than 1300 Pennsylvania Avenue as the place for delivery of any offers; indeed, nothing in the amendments purported to provide any information at all regarding the place of delivery of offers. While the protesters may have been confused by the amendments, that confusion resulted, not from an ambiguity introduced by the agency, but from their ignoring the clear delivery information in the RFP in favor of a tenuous interpretation of the address information in the amendment. We conclude that the solicitation was not ambiguous and that the agency therefore properly rejected the proposals as late.¹

¹ We note that, even if we agreed that the delivery information was ambiguous, any ambiguity would be patent rather than latent; to the extent the delivery instructions were rendered unclear by the amendment, this was apparent from the face of the RFP and the amendments. As such, the protest would be untimely, since it was not filed prior to the closing time for receipt of offers. Bid Protest Regulations,

(continued...)

The protesters assert that the RFP should have included an internal EPA regulatory provision, EP-S 99-2, which provides general instructions for submission of hand-carried/courier-delivered and mailed offers. However, this assertion involves an alleged defect apparent on the face of the solicitation that had to be raised prior to the time set for receipt of offers. 4 C.F.R. § 21.2(a)(1). Since the protesters did not raise this argument until after the April 30 closing date, this aspect of the protest is untimely. In any event, the agency explains, and the protester does not refute, that “EP” provisions are only optional, and thus need not be included in a solicitation. EPA Letter, June 10, 2004, at 1. Moreover, given our conclusion that the RFP was not ambiguous regarding place of delivery, the absence of this provision would not provide a basis for sustaining the protests.

The protests are denied.

Anthony H. Gamboa
General Counsel

(...continued)

4 C.F.R. § 21.2(a)(1) (2004); General Elec. Co., B-248565, B-248565.2, Sept. 8, 1992, 92-2 CPD ¶ 159 at 2.