



**The Comptroller General  
of the United States**

Washington, D.C. 20548

Killee - M - II

## **Decision**

**Matter of:** Abt Associates Inc.

**File:** B-226063

**Date:** May 14, 1987

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### **DIGEST**

Where a request for proposals requires offerors to submit copies of their proposal to two separate locations in Africa by the stipulated closing date, and an offeror timely delivers copies of its proposal to only one of those locations, the proposal should not be rejected as late since its acceptance, if otherwise appropriate, would result in a binding contract and would not unfairly prejudice other offerors.

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### **DECISION**

Abt Associates Inc. protests the Agency for International Development's (AID's) rejection of its proposal as late for failing to effect timely delivery to each of two locations in Africa, as specified in request for proposals (RFP) No. 87-660-0119. The successful contractor is to provide technical assistance to the government of Zaire. We find timely delivery to just one of the locations legally sufficient, and we sustain the protest.

The solicitation stated that offerors were to submit three copies of the technical proposal and one copy of the business proposal to the AID project office in Kinshasa, Zaire and one copy of the technical proposal and two copies of the business proposal to the AID regional contracting office in Abidjan, Cote d'Ivoire by 3 p.m. local time on December 31, 1986. Abt dispatched copies of its proposal by private courier to each location. The regional contracting office in Abidjan, Cote d'Ivoire received its set on or before the designated date; however, due to misrouting by the courier service, the other set did not arrive at the AID project office in Kinshasa, Zaire until January 5, 1987. AID's regional contracting office concluded that Abt's proposal was late because copies had not been received in both locations by the designated date and rejected it accordingly. Abt filed a timely protest with this Office, and AID has suspended action on the procurement pending our decision.

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Abt contends that its failure to deliver copies of its proposal to both locations by December 31 did not alter its proposal in any way, since copies were in fact delivered to one location in a timely manner. This being the case, Abt argues, other offerors were not prejudiced, and no harm to the integrity of the competitive system resulted. Abt urges that AID should waive its failure to effect timely delivery to both locations as an informality or minor irregularity.

AID responds that the government may properly impose conditions upon competition to the extent necessary to satisfy its needs. In this case, AID states, it was necessary to direct that copies of proposals be delivered to the specified offices in both countries in order to properly coordinate the evaluation of proposals with the government of Zaire while conducting the procurement out of AID's regional contracting office in the Ivory Coast, and to accomplish this within the time available to preserve the continuity of the program.

It is generally true, as AID states, that the government may impose conditions on offerors to the extent those conditions reflect actual and reasonable needs of the agency. Bids and proposals that deviate from solicitation requirements, however, need not be rejected in every instance. When the deviation involves a matter of form rather than of substance, or when the government's needs will be satisfied by acceptance of a deviating offer and other offerors would not be unfairly prejudiced by the acceptance, such an offer can be accepted. See P. Shnitzer, Government Contract Bidding 240-1 (1976); Thomas Constr. Co., Inc., B-184810, Oct. 21, 1975, 75-2 CPD ¶ 248. Thus, what we must determine is whether Abt's failure to timely deliver its proposal to both specified locations involves a matter of substance rather than form, and whether any competing offeror would be prejudiced by acceptance of Abt's proposal.

There is no question but that Abt's proposal was received in AID's Kinshasa office after the time set for receipt of offers. The general rule is that a late proposal, subject to certain exceptions not applicable here, may not be considered. Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 15.412(c) (1986) and 52.215-10 (1985); Hyster Co., 55 Comp. Gen. 267 (1975), 75-2 CPD ¶ 176; Leonard Lane Assocs., B-195388, Aug. 20, 1979, 79-2 CPD ¶ 134. Abt's proposal, however, was submitted on time to AID's Abidjan office, and while we appreciate AID's desire to have offerors submit copies of their proposals to both Kinshasa and Abidjan to facilitate proposal evaluation (technical evaluation was to occur in Kinshasa, while evaluation of cost was to take place

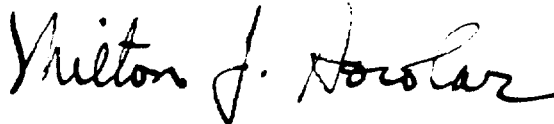
in Abidjan), we fail to see why the timely submission of a complete proposal to one of the specified locations would not legally represent the submission of an offer to the government that could be evaluated and, upon acceptance, would result in a binding contract. In our view, this situation is somewhat analogous to one in which an offeror fails to comply with a solicitation requirement to submit multiple copies of the offer. Failure to comply with such a requirement has long been viewed as a waivable minor informality. See 51 Comp. Gen. 329 (1971); 31 Comp. Gen. 20 (1951); FAR, 48 C.F.R. § 14.405(a). Just as one copy of a bid or proposal can constitute a valid offer that can be evaluated and accepted despite a requirement for submission of multiple copies, so, we think, can the submission of a complete proposal to a designated location despite a requirement for submission to two different locations. In both situations, we think the results of the submission is that an offer has been made and that, upon acceptance during the acceptance period, a valid and binding contract would result.

Moreover, neither consideration nor acceptance of the offer would contravene the major policy underlying the late proposals clause--the prevention of one offeror's obtaining an unfair competitive advantage. See Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD ¶ 366; Siemens Hearing Instruments, Inc., B-225548, Dec. 30, 1986, 86-2 CPD ¶ 721; -- A. Gallagher, The Law of Federal Negotiated Contract Formation, § 4-2.11 (1981). Here, there was no possibility that Abt, by virtue of the late delivery of its proposal to the second location, either could take advantage of changed circumstances or of an improper disclosure of information concerning other offers during the interim, since the contents of its proposal already had been disclosed at the first location. Moreover, since Abt timely submitted a copy of its proposal to that location, the firm gained no advantage in preparation time over other offerors. In summary, no harm to the competitive system will result from the consideration of Abt's proposal under these circumstances.

In light of the above, we believe that the failure of Abt to deliver copies of its proposal to both of the locations by the stipulated closing date should be waived as an informality or minor irregularity. In so concluding, we acknowledge AID's belief that the protester raised the minor informality argument in an untimely fashion. Regardless of when the protester raised the point, however, our role, in response to a timely protest (such as we have here) is to determine the legality of the agency's action. The rejection of a proposal for what properly is a minor informality would be contrary

to procurement law and regulation. Therefore, in reviewing this protest, we are not precluded from reaching what we believe to be the correct legal result merely because the protester articulated that particular reason for objecting to the agency's action later than it should have.

By letter of today to the Administrator of AID, we are recommending that AID consider Abt's proposal as timely received and evaluate it together with the other proposals received by the closing date. The protest is sustained.



**Acting**

Comptroller General  
of the United States