



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Latins American, Inc.

File: B-247674

Date: June 15, 1992

Charles E. Tate for the protester.
Karl Gottfried, Jr. for The Gottfried Corporation, an interested party.
James Tower, Department of Energy, for the agency.
Scott H. Riback, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency furnished a defective floppy disk required to submit quotations and then refused to extend closing date for the submission of quotations is denied where protester received disk 14 days prior to closing date but did not attempt to verify that floppy disk was good until the evening before closing; by delaying its examination of the disk until the evening before closing, protester failed to avail itself of every reasonable opportunity to obtain the requisite solicitation materials.

DECISION

Latins American, Inc. (LAI) protests the rejection of its offer under request for quotations (RFQ) No. DES-91-EMR-123, issued by Boeing Petroleum Services (BPS) on behalf of the Department of Energy (DOE) to acquire emergency pipeline repair services in connection with BPS' operation and maintenance of the strategic petroleum reserve. LAI argues that BPS improperly provided it with a defective computer floppy disk needed for the submission of its quote and challenges BPS' subsequent refusal to extend the deadline for the submission of quotations.

We deny the protest.

The RFQ contemplated the award of an indefinite quantity, time and materials-type contract to perform emergency pipeline repair services on an as needed basis. The RFQ package included a computer floppy disk which was to be used in connection with the preparation of quotations; firms responding to the solicitation were required to enter their unit prices on the floppy disk, which contained various

054711/146933

formulae for computing extended prices. The solicitation was synopsized in the Commerce Business Daily (CBD) on September 20, 1991; when issued on December 20, the solicitation was provided to 25 firms which had responded to the CBD announcement.

LAI was not among the firms originally receiving the RFQ package because it had not responded to the CBD announcement. Instead, a LAI representative contacted the contracting office by telephone on January 29 and expressed an interest in submitting a quotation; on that date, the LAI representative was furnished a copy of the floppy disk and copies of amendment Nos. 1 and 2 to the RFQ. (A subcontractor to LAI, Professional Divers, Inc., apparently had previously obtained a copy of the RFQ.) Five additional amendments were subsequently issued and all were provided to Professional Divers.¹ As amended, the solicitation required that quotations be received no later than 5 p.m., on February 12.

According to LAI, sometime during the evening of February 11, LAI's representatives loaded the floppy disk into one of the firm's computers and discovered at that time that they were unable to complete preparation of the firm's quotation because the disk was blank. LAI employees then attempted to contact the contracting office by telephone in an effort to cure the problem, but were unable to reach anyone in the office; instead, they left a message on the office voice mail system at approximately 7 p.m. advising of the defective disk and that LAI representatives would be at BPS' offices early the next morning to obtain a new floppy disk.

On the morning of February 12, LAI's representatives were furnished a new copy of the disk at the BPS contracting office. At that time, the LAI representatives requested that the deadline for the submission of quotations be extended in order to provide the firm sufficient time to complete its work on the disk. When BPS declined to extend the deadline for receipt of quotations beyond the previously-established deadline of 5 p.m. that day, LAI filed a protest with BPS.

LAI did not submit a quotation until 5:21 p.m., 21 minutes past the deadline. Furthermore, LAI's quotation did not contain the required technical proposal, quality assurance plan or safety plan, did not acknowledge receipt of the

¹The amendments were provided to Professional Divers rather than LAI because LAI did not provide the contracting office with an address or telephone number when it picked up its solicitation materials on January 29.

solicitation's seven amendments, and did not include a completed floppy disk. Subsequently, on February 13, LAI submitted additional materials to the contracting office, including materials associated with the firm's technical proposal and a completed floppy disk. Upon being informed that the materials being furnished would be treated as a late submission, LAI filed this protest.

LAI complains that the agency first failed to provide it with a properly programmed floppy disk and then acted improperly in refusing to extend the deadline for the submission of quotations. According to the protester, BPS was responsible for improperly loading the computer program onto the disk and, therefore, should have extended the deadline for the submission of offers upon learning that it did not possess a complete solicitation package.

DOE, on the other hand, denies that a defective disk was furnished to LAI. In this regard, the agency has furnished an affidavit from the contracting official who developed the programs on the computer disk in which he states that he checked each of the computer disks provided to offerors to verify that all of the files from the master copy had been copied and that the programs were functional. The agency notes that offerors were able to enter data on the disks and suggests that "some form of accidental mishandling could have occurred," perhaps an accidental reformatting of the disk.

Prospective offerors or bidders bear an affirmative duty to make every reasonable effort to obtain solicitation materials. For example, a firm did not avail itself of every reasonable opportunity to obtain all pages of a solicitation amendment after receiving only the first of 14 pages and the first page clearly indicated that the amendment contained additional pages. UpSide Down Productions., B-243308, July 17, 1991, 91-2 CPD ¶ 66.

In this case, LAI did not avail itself of every reasonable opportunity to obtain the requisite solicitation materials. LAI obtained a complete copy of the solicitation package, including the floppy disk, 14 days prior to the closing date. The solicitation required offerors to use the floppy disk in submitting their quotes. Notwithstanding the necessity for a good disk if it was to submit a quote, LAI did not load the disk into a computer to verify the contents until 13 days after receipt, on the evening before closing. In our view, LAI should have examined the disk more than a day before quotation's were due. LAI's delay in examining the disk contributed to its inability to submit a timely quote. Had LAI examined the disk within a reasonable period after receipt, it could have discovered any defect in the disk and obtained a replacement copy in time to submit a

timely quotation. Even if the agency was at fault in furnishing a defective disk (which is not clear from the record), the agency was not required to extend the closing date.²

The protest is denied.


for James F. Hinchman
General Counsel

²It is also not apparent that LAI was prejudiced by any failure on the part of the agency. Prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. Gemini Laminating Corp. et al., B-245223, Dec. 23, 1991, 91-2 CPD ¶ 573. LAI's initial late submission on the closing date did not include a technical proposal, quality assurance plan, safety plan and properly executed RFQ form, and did not acknowledge the solicitation's amendments, all of which were required for an acceptable quotation. LAI has not explained why its initial failure to obtain a properly programmed floppy disk left it unable to prepare an otherwise acceptable quotation by the closing date. On the contrary, the record indicates that even if LAI had received a good disk in time to submit a timely offer by the February 12 deadline, its proposal was unacceptable and LAI therefore would not have been in line for award. See generally Sea Containers of Am., Inc., B-243228, July 11, 1991, 91-2 CPD ¶ 45.