



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R-N-R Consulting Company

File: B-251375

Date: March 22, 1993

Ashis K. Nandi for the protester.
Jonathan Silverstone, Esq., Agency for International
Development, for the agency
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where protester erroneously addressed hand carried proposal to agency address in Washington, D.C. (designated by solicitation as address for submission of proposals sent by registered or certified mail and, then, only if registered or certified at least 15 calendar days before date set for receipt of proposals), rather than to contracting office in New Delhi, India (designated by solicitation as address for submission of hand carried proposals), and proposal was not received by the contracting office until 10 days after the date set in solicitation for receipt of initial proposals, contracting officer properly rejected proposal as late.

DECISION

R-N-R Consulting Company protests the Agency for International Development's (AID) rejection of its proposal submitted in response to request for proposals (RFP) No. 92-08 for supplying technical assistance, training, and procurement of computer hardware/software and audio-visual equipment. The proposal was received by the contracting officer at the New Delhi address specified in the RFP for receipt of initial proposals after the date specified for receipt of initial proposals, and the contracting officer rejected the proposal as late. R-N-R argues that it gave its proposal to Federal Express, a commercial courier, before the closing time and, therefore, the contracting officer's determination was incorrect. We deny the protest.

Issued on September 14, 1992, by AID's regional contracting officer stationed at the AID mission in New Delhi, India, the RFP indicated that the closing time and date for submission of initial proposals was 4 p.m., Friday, October 23. R-N-R's proposal was received by the contracting officer in New Delhi on November 2. By fax letter of November 18, the contracting officer rejected the proposal as late, and R-N-R filed its protest in our Office on the following day.

The RFP contains the standard "Late Submissions, Modifications, and Withdrawals of Proposals" clause, Federal Acquisition Regulation (FAR) § 52.215-10, providing that proposals received at the designated office after the exact time specified will not be considered. The RFP also includes a clause, "Submission of Proposals," authorized as a deviation to the FAR, containing different directions regarding submission of proposals, depending on whether an offer is dispatched by mail or by commercial courier, and whether dispatch is initiated within the United States or from locations outside the United States. R-N-R dispatched its proposal from Lima, Ohio; therefore, we will only discuss the RFP's directions for submitting proposals from points within the United States in the remainder of this decision.

The "Submission of Proposals" clause modifies FAR § 52.215-10 by: (1) allowing proposals submitted to commercial couriers before the closing time/date to be considered timely; and (2) allowing proposals to be mailed by registered or certified mail to the State Department in Washington, D.C. According to AID, these modifications relax the normal proposal submission rules and are designed to encourage American companies to compete for contracts by recognizing that there are substantial delays in delivery of mail and diplomatic pouches to New Delhi.

The RFP stated that proposals delivered by registered or certified mail had to be registered/certified 15 days¹ before Friday, October 23, and that they must be mailed to the contracting officer through the Department of State at a specified Washington, D.C., address. The RFP stated that proposals delivered by commercial courier had to be delivered to a commercial courier no later than 4 p.m. (local time at the place of delivery to the courier service), Friday, October 23, 1992, and that they must be specifically addressed to the contracting officer at his address in New Delhi.


¹This modifies FAR § 52.215-10, which requires that proposals be registered or certified only 5 days before closing.

R-N-R did not follow these instructions. The Federal Express receipt submitted to our Office by R-N-R shows that the proposal package was addressed to the Department of State in Washington, D.C., the address reserved for proposals sent by United States mail, rather than to New Delhi as the RFP required. This appears to be the paramount cause for the delayed receipt.

We note, in this regard, that AID required proposals to be sent to Washington by registered or certified mail at least 15 days prior to the closing date, presumably to allow adequate time for proposals received in Washington to be forwarded and received in New Delhi within a reasonable time of the closing date given the delays in mail and diplomatic pouch delivery to New Delhi. Proposals to be sent by commercial carrier to New Delhi, on the other hand, could be delivered to the carrier up to the actual closing date, apparently because substantial delays in delivery by commercial carrier are not normally encountered and therefore proposals so sent could be expected to arrive within a reasonable time after the closing date. The protester, by first sending its proposal to Washington just 1 day before the closing date, in effect defeated this delivery scheme since its proposal could not be received in Washington any earlier than the closing date and then first had to be sent to New Delhi by means that typically encounter substantial delays.

Bidders and offerors who do not follow solicitation instructions and thereby contribute to the delayed receipt of their offers bear the risk that their offers will arrive late. See Gould Metal Specialties Inc., B-246686, Mar. 27, 1992, 92-1 CPD ¶ 311. Under the circumstances, we think the contracting officer properly rejected R-N-R's proposal.

The protest is denied.


for James F. Hinchman
General Counsel