



Comptroller General
of the United States

3292710

Washington, D.C. 20548

Decision

Matter of: Inland Service Corporation, Inc.

File: B-252947.4

Date: November 4, 1993

Theodore M. Bailey, Esq., Bailey, Shaw & Deadman, for the protester.
Marilyn Walter Johnson, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected an offer as late where the technical proposal was timely submitted, but the required price proposal was not submitted before the closing time set for receipt of offers.

DECISION

Inland Service Corporation, Inc. protests the rejection of its proposal as late by the Department of the Navy under request for proposals (RFP) No. N62467-92-R-0664, issued for support services for the Naval Station, Ingleside, Texas.

We deny the protest.

The RFP, as amended, required that offerors prepare a technical proposal and a price proposal, and submit the originals and one copy each of their technical and price proposals to a designated address in Charleston, South Carolina, and four copies of their technical proposals only to a designated address in Ingleside, Texas. The RFP stated that the proposals must be received at the designated locations by 12:30 p.m. local time on March 8, 1993,¹ and

¹Inland's contention that the requirement in the RFP that proposals be submitted by 12:30 p.m. local time "create(d) an immediate ambiguity" because the locations designated are in two different time zones is untimely and will not be considered. Alleged improprieties in solicitations which are apparent prior to the date set for initial proposal
(continued...)

that proposals not received at the designated locations by the time and date specified would be treated in accordance with the standard "Late Submissions, Modifications, and Withdrawals of Proposals" clause set forth at Federal Acquisition Regulation (FAR) § 52.215-10. That clause provides, with limited exceptions not applicable here, that proposals received at the designated locations after the exact time and date specified will not be considered.

Inland's price and technical proposals were received by the agency at the Charleston location at 2:02 p.m. local time, although Inland's technical proposal was timely received by the agency at the Ingleside location by 12:30 p.m. local time. The agency notified Inland that its proposal was being rejected as late because Inland's price and technical proposals were not received at the Charleston location by the 12:30 p.m. local time as required.

Inland protests that the agency improperly rejected its proposal as late. Inland contends that its proposal should be considered because it "was timely received at one of the two designated points of delivery . . . [and the] fact that it was received only 90 minutes late at the other did not prejudice any of the other offerors, and its receipt did not compromise the integrity of the competitive procurement process." Inland, upon learning that only the incumbent contractor, Ferguson-Williams, Inc., had submitted a timely offer in response to the solicitation, filed a supplemental protest with our Office, arguing that the agency, by not considering Inland's proposal, had effectively entered into "improper sole source negotiations" with Ferguson-Williams.

The agency informed our Office on June 14 that it was canceling the solicitation, and we thus dismissed Inland's protests as academic. Ferguson-Williams protested this cancellation. On July 13, the agency notified our Office that it had "reconsidered its position" and determined that it was "appropriate to open discussions" with Ferguson-Williams under the RFP, and would inform Inland of this decision. Inland protests the rejection of its proposal as late, even though it concedes that a complete copy of its proposal was not timely received at the Charleston location.

¹ (...continued)

opening must be protested prior to the time set for receipt of initial proposals in order to be considered by our Office. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1) (1993).

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time. Radar Devices, Inc., B-249118, Oct. 27, 1992, 92-2 CPD ¶ 287. FAR § 15.412 governs late proposals, and provides that any proposal received after the time set for receipt will not be considered unless it is covered by one of the specified exceptions, none of which is applicable here.² The late proposal rule alleviates confusion, assures equal treatment of all offerors, and prevents one offeror from obtaining any unfair competitive advantage that might accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors, for example, the consideration of changed circumstances or the improper disclosure of information concerning other offers. The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 CPD ¶ 660. While the government's application of the late proposal rules sometimes may seem harsh, and the government may lose the benefit of proposals that offer terms more advantageous than those that were timely received, protecting the integrity of the procurement process by insuring that fair and impartial treatment is guaranteed and maintaining confidence in the competitive system are of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. Phoenix Research Group, Inc., B-240840, Dec. 21, 1990, 90-2 CPD ¶ 514; Siemens Hearing Instruments, Inc., B-225548, Dec. 30, 1986, 86-2 CPD ¶ 721.

Inland maintains that the agency should consider its proposal because a portion of it was received by the time specified; that is, Inland's technical proposal was delivered to the Ingleside, Texas, location by 12:30 p.m. local time as required. In advancing this argument, Inland relies on our decision in Abt Assocs., Inc., 66 Comp. Gen. 460 (1987), 87-1 CPD ¶ 513. The protester in Abt submitted a complete copy of its proposal to one of the two locations designated in the solicitation by the time and date designated, but failed to timely deliver its proposal to the other location. We concluded that because the agency had received a complete copy of the protester's proposal at one location on time, the protester's failure to submit a copy of its proposal to the other location on time was a minor informality. We noted that because the agency had received one copy of the proposal in a timely manner and the entire contents of its proposal had thus been disclosed to the agency, neither the consideration nor the acceptance of

²These exceptions concern submissions that are timely mailed but are received late due to delays in the mail service or due to mishandling by the government, or a late submission that is the only proposal received. FAR §§ 15.412 and 52.215-10.

the offer would contravene the policies underlying the late proposal clause because there was no possibility that the protester, by virtue of the late delivery of its proposal to one location, either could take advantage of changed circumstances or of an improper disclosure of information concerning other offers.

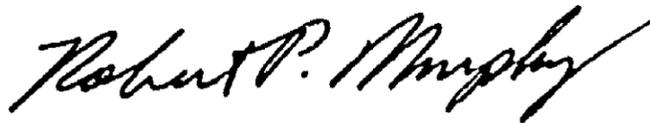
This case is clearly distinguishable from Abt. Here, as mentioned previously, the RFP's instructions required that a complete copy of an offeror's proposal--comprised of the technical proposal and the price proposal--be delivered to only the Charleston location. Because Inland's proposal was not received at the Charleston location until 2:02 p.m. local time, Inland did not submit a complete copy of its proposal on time to any location, and thus did not disclose the contents of its proposal, including its price proposal, to the agency by the RFP's closing time at either location. Therefore, as opposed to the situation in Abt, where the protester had delivered a complete copy of its proposal to the agency at one of the designated locations in a timely manner, Inland's proposal was properly rejected by the agency as late. See Radar Devices, Inc., supra.

Inland claims that since the solicitation stated that in evaluating proposals "[t]echnical and price portions of proposals would be compared for consistency," and given that its technical proposal was delivered to Ingleside, Texas, by 12:30 p.m. local time, as required by the RFP, it could not have obtained an unfair competitive advantage by modifying its price proposal, because that proposal would then be inconsistent with its technical proposal, which was timely submitted to the agency. Whether this be true or not, the fact remains that Inland failed to submit a complete copy of its proposal to the agency by the time set forth in the RFP, and the proposal was therefore required to be rejected as late by the late proposal rules. Timely delivering a portion of a proposal does not permit an offeror to supplement the proposal with untimely submissions. See Radar Devices, supra (proposal transmitted by facsimile properly rejected as late where transmission began prior to the closing time but concluded 27 minutes after closing; portion transmitted during the 27 minutes after the closing time was submitted late and could not be considered); Stellar Mfg. Co., B-245857, Jan. 27, 1992, 92-1 CPD ¶ 114 (late proposal rules preclude an offeror from curing an omission from its initial proposal after the time set for receipt of initial proposals).

Inland contends that the rejection of its proposal as late will result in "a de facto sole source" procurement. This argument does not allow for the acceptance of Inland's proposal, because it was late and there is no provision under the late proposal rules that permits its

consideration. See Paulmar, Inc., B-207321, May 27, 1983, 82-1 CPD ¶ 503. To the extent that Inland contends that the solicitation should be canceled and new proposals solicited because only one proposal was received, this matter is vested within the exercise of the agency's discretion. While an agency may cancel a negotiated procurement based on the potential for increased competition, see Maytag Aircraft Corp., B-250628; B-251152, Feb. 2, 1993, 93-1 CPD ¶ 93, we are aware of no requirement that it do so to benefit an offeror which submitted a late proposal.

The protest is denied.



for James F. Hinchman
General Counsel