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**Comptroller General
of the United States**

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

Decision

Matter of: Dellew Corporation

File: B-299408

Date: May 1, 2007

Kelsey Lewis for the protester.

Terry Hart Lee, Esq., Department of Commerce, 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

Although as a general matter a contracting agency has broad discretion with regard to the scheduling of site visits, the agency's exercise of that discretion was unreasonable where the protester was unable to attend a timely requested site visit because the agency first informed the protester only one day before the date and time of the site visit that the site visit had been scheduled and unreasonably declined the protester's reasonable request for a later site visit to allow that firm a meaningful opportunity to compete.

DECISION

Dellew Corporation protests the terms of request for proposals (RFP) No. AB133F-07-RP-0017, issued by the National Oceanic and Atmospheric Administration, Department of Commerce, for operation and maintenance services at the Newport Research Center, Newport, Oregon.¹ The protester also argues that the agency failed to reasonably accommodate its request for a site visit.

We sustain the protest.

The RFP, issued on December 21, 2006, provided for the award of a fixed-price contract for a base period of 1 year with four 1-year options. The RFP included a detailed statement of work and proposal preparation instructions, and advised potential offerors that "all questions concerning [the] solicitation" were to be

¹ The Newport Research Center consists of three office/laboratory buildings and two support structures, and is located on the campus of the Oregon State University.

received by the agency no later than 20 days after December 21.² RFP at 70. The RFP provided that award would be made to the offeror submitting the proposal determined to represent the best value to the agency, based upon the listed evaluation factors of past performance, technical approach and expertise, management approach, key personnel, and price. The solicitation also advised offerors as follows with regard to site visits to the facility:

Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. However, due to heightened security, offerors are required to call [the] Contract Specialist or email in advance to make arrangements for a site visit and security access to the site.³

RFP at 71. Proposals were due to be submitted by January 30, 2007.⁴

The record reflects that on Wednesday, January 10, the designated contract specialist received by e-mail from Dellew a number of questions regarding the solicitation and acquisition, with one of the questions asking when the site visit would take place. AR, Tab F(1), Dellew E-mail. The contract specialist replied by e-mail the next day advising, among other things, that Dellew would need to make arrangements for a site visit in advance, and that “[c]urrently, Jan. 17, 18, or 19th (Wednesday-Friday) are dates being made available.” AR, Tab F(1), Contract Specialist E-mail. Dellew asserts that it did not receive this e-mail (until it was later resent, as explained below).

According to the contract specialist, she received a voice-mail the following day (Friday, January 12) from an unidentified caller stating that the caller had “questions regarding Newport,” and requesting that the contract specialist return the call at the telephone number provided. The contract specialist adds that her voice-mail

² The agency calculates that, in accordance with the solicitation, questions regarding the RFP were to be received by January 10, 2007. Agency Report (AR) at 3.

³ The RFP’s site visit clause is a modified version of Federal Acquisition Regulation (FAR) § 52.237-1, Site Visit, which is to be inserted “in solicitations for services to be performed on Government installations, unless the solicitation is for construction.” FAR § 37.110(a).

⁴ The agency issued one amendment to the solicitation on January 19, 2007, which provides, among other things, the square footage of each of the three main buildings to be serviced by the successful contractor. Agency Report, Tab B, RFP amend. 1. The amendment did not change the proposal due date of January 30.

greeting stated that she would be out of the office on January 12, and to leave a message and that she would return the call. The contract specialist states that she was out of the office on January 12 (Friday), January 13 (Saturday), January 14 (Sunday), January 15 (Monday, a federal holiday), and that she “update[d]” her voice mail greeting on January 16 to reflect that she would not be in the office on that day because of “hazardous weather conditions.” Contract Specialist’s Statement at 2.

The contract specialist states that she returned to the office on January 17, and received another voice-mail message “from an unidentified caller [from the same phone number], essentially reiterating the message left for [her] on January 12.” Contract Specialist’s Statement at 2. The contract specialist returned the call, spoke with a representative of Dellew, and concluded as a result of this conversation that the “unidentified caller” of January 12 was this same Dellew representative. Id. According to the contract specialist, the Dellew representative asked during this January 17 call to schedule a site visit, and was told by the contract specialist that such a request was required to be made in writing or by e-mail. Contract Specialist Statement at 3. The Dellew representative submitted the site visit request by e-mail shortly thereafter, and the contract specialist provided the Dellew representative by e-mail later that same day the name and telephone number of the agency facilities operations manager for Newport, who would be conducting the site visit. AR, Tab F(3), Contract Specialist E-mail. The record also reflects that the contract specialist informed the facilities operations manager of Dellew’s request.

The facilities operations manager states that she left a telephone message for the Dellew representative on the morning of January 18, informing him that she “had set aside January 19 at 1 p.m. for [Dellew] to visit the research facility.” Facilities Operations Manager’s Statement at 1. The facilities operations manager explains that she understood that the Dellew representative was “located in Washington State, [and] thought that this was enough time to allow him or another Dellew Corp. representative to travel” to the agency’s facility in Oregon. Id.

The facilities operations manager states that she received a telephone message from the Dellew representative on January 18 “at around noon . . . requesting a site visit,” and again “at about 3:30 p.m.” Statement of the Facilities Operations Manager at 2. The facilities operations manager explains that she was unable to return the calls until “about 4 p.m.” because of “pressing needs in the facility,” and that during this call the Dellew representative requested that the site visit be scheduled for the following week, rather than the next day at 1 p.m. Id. The facilities operations manager responded that she could not “accommodate” the request for a later site visit, and told the Dellew representative that based on his location in Washington she calculated that “it would take about six hours” for him to drive to the agency facility. Id. The record reflects that the Dellew representative expressed his disagreement to the facilities operations manager as to the reasonableness of the agency’s scheduling of the site visit, and that on the following day, the president of Dellew contacted the contract specialist and complained about the agency’s scheduling of the site visit. Contract Specialist’s Statement at 3. The president of Dellew also complained at this

time that the agency had not responded to the questions submitted by Dellew on January 10. The contract specialist responded that in her view “the Government had made a reasonable attempt to schedule a site visit” for Dellew, and that she would “resend” her response to Dellew’s January 10 questions which according to Dellew had never been received. Id. at 3-4.

Dellew, in addition to challenging a number of terms in the solicitation, argues that the agency “did not provide ample time for our representative to attend a site visit.” Protester’s Comments at 1. The protester explains in this regard that it had contacted the agency on numerous occasions regarding its request for a site visit, that it is a Hawaii-based firm, and that its president, who would have attended the site visit in addition to the Dellew representative located in Washington, simply could not get to the agency’s facility “overnight.”⁵

A contracting agency is generally required to provide enough information through the solicitation or otherwise to allow offerors to compete intelligently and on relatively equal terms. Int’l Resources Co., B-248050.3, Feb. 16, 1993, 93-1 CPD ¶ 138 at 2-3; A&C Bldg. & Indus. Maint. Corp., B-230270, May 12, 1988, 88-1 ¶ 451 at 3; see 41 U.S.C. § 253 (a). With regard to site visits, the scheduling of such visits is within the discretion of the contracting agency, and there is no obligation on the part of the contracting agency to accommodate the individual preferences of every prospective offeror by providing unlimited access to facilities for the purpose of site visitations. See Caltech Service Corp., B-240726, Dec. 18, 1990, 90-2 CPD ¶ 497 at 5; BECO Corp., B-217573, May 15, 1985, 85-1 CPD ¶ 548 at 3. While recognizing that the contracting agency has considerable discretion with regard to the scheduling of site visits, the agency’s discretion in this regard is not unfettered, and we will review the agency’s determinations to ensure that they are reasonably based. See Caltech Serv. Corp., supra; see also Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 5-6 (although our Office has recognized that in numerous areas contracting agencies have broad discretion, the exercise of that discretion is nevertheless subject to the test of reasonableness).

We find based upon this record, including the explanations and argument provided by the agency in response to the protest, that the agency did not act reasonably with regard to the scheduling of Dellew’s site visit, and that under the circumstances here, this deprived Dellew of an opportunity to compete intelligently and on relatively equal terms. As indicated below, our conclusion is not based on any one event or

⁵ The importance of a site visit attached by the agency to prospective offerors is evidenced by the terms of solicitation, which, as noted above, provided that “[o]fferors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance.” RFP at 71.

factual bit of information, but rather, on the totality of the circumstances surrounding Dellew's request for a site visit and the agency's response.

As an initial matter, we disagree with the agency's position that its e-mail of January 11 provided Dellew with notice of the dates for the site visit.⁶ First, although the agency points out that its January 11 e-mail response to the protester's January 10 e-mail provided that "[c]urrently, Jan. 17, 18 or 19th (Wednesday-Friday) are being made available" for site visits, the phrasing of this response does not restrict the conduct of a site visit to January 17, 18, or 19, but only provides through the use of the adverb "currently" that as of January 11 those dates were "being made available." In any event, the protester claims that it did not receive this e-mail from the agency until it was resent on January 19, and while the agency argues in its supplemental report that "it is not credible that the protester did not receive that . . . e-mail," the agency concedes that it cannot verify that the e-mail was received by Dellew. Agency Supp. Report at 1-2; Contracting Officer's Statement at 4. Additionally, even if Dellew had received the January 11 e-mail, the record reflects that Dellew would not have been able to contact the contract specialist to schedule the site visit any earlier than it was able to here, given that the contract specialist was out of the office from January 12 through January 16.

We further disagree with the agency's apparent assertion that it made a reasonable attempt to provide Dellew with a site visit when it returned Dellew's telephone calls 5 days after Dellew placed its first telephone call. That is, although on January 17 the contract specialist did return Dellew's telephone calls, the contract specialist required a written request for a site visit before one could be scheduled, even though this was not required by the RFP. Additionally, while the facilities operations manager advised Dellew by telephone message in the morning of January 18 that the site visit was scheduled for the next day (January 19), she did not return Dellew's telephone calls on this subject until 4 p.m. on January 18, and then only to advise Dellew that the site visit would not be scheduled for a different day, even though the closing date for receipt of proposals was not until January 30, and that the Dellew representative should be able to attend the site visit as scheduled because, based on her calculations, the Dellew representative was 6 hours driving time away. The record does not establish a reasonable basis for the agency's unwillingness to accommodate what appears to have been a reasonable request on Dellew's part that its site visit be scheduled during the week of January 22.

With regard to Dellew's actions, the record reflects, as referenced above, that Dellew made six attempts to contact the agency to schedule a site visit, beginning with its e-mail of January 10, and continuing with four telephone calls and an additional e-mail. These requests were not untimely made, as suggested by the agency, because

⁶ We note that the solicitation did not establish or provide any day or dates for the conduct of site visits, or establish any deadline for an offeror to request a site visit. See RFP at 71.

they commenced on January 10 (almost 3 weeks before proposals were due and by the deadline established by the RFP for submitting questions), and Dellew's telephone calls to the contract specialist--the method established by the RFP for scheduling site visits, see RFP at 71--started on January 12 (but were not returned until January 17 because the contract specialist--the only individual designated for arranging site visits--was out of the office).⁷

We recommend that the agency reopen the competition, provide a reasonable time and date for the conduct of Dellew's site visit, and allow Dellew to submit a proposal.⁸ We also recommend that the agency reimburse Dellew for the costs of filing and pursuing this protest. The protester's certified claim for costs, detailing the time expended and the costs incurred must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2007).

The protest is sustained.

Gary L. Kepplinger
General Counsel

⁷ While Dellew does not rebut the contract specialist's claim that the Dellew representative failed to identify himself in his voice-mail message of January 12, it can be reasonably presumed that the contract specialist would have returned that call on that date if she had been in the office, given the contract specialist's return of Dellew's telephone call of January 16 where Dellew's representative again failed to identify himself.

⁸ We note that the protester also argues that the agency failed to answer certain questions regarding the facility, and that it was unable to obtain the applicable collective bargaining agreement (CBA) and wage determination referenced in the RFP, and that the agency should provide "the accrued vacation and sick leave hours for the union workers." Protest at 4. The protester points out here that as instructed by the agency it requested a copy of the CBA from the relevant union, and that the union informed Dellew that it was to obtain the CBA and wage determination from the agency. The agency responds, and the record confirms, that the protester's questions regarding the facility were answered through Amendment No. 1 to the solicitation (Jan. 19, 2007). With regard to the CBA and wage determination, the agency states that it was unaware that the protester was unable to obtain the CBA or wage determination until the protester filed its protest. Given that the agency has this information readily available, the agency may want to consider providing the protester with copies of the CBA and applicable wage determination as part of its corrective action.