



Decision

Matter of: Spectronics Corporation

File: B-260924

Date: July 27, 1995

Dorothy D. Rollins for the protester.

David L. Frecker, Esq., General Services Administration, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposal was submitted late because agency furnished a defective computer disk required to submit proposal is denied where protester received disk weeks prior to closing date but did not attempt to verify that disk was useable until the day before closing; by delaying its examination of the disk until the day before closing, protester failed to avail itself of every reasonable opportunity to obtain the requisite solicitation materials.

DECISION

Spectronics Corporation protests the rejection of its proposal as late under request for proposals (RFP) No. 4KCA94AJ01, issued by the General Services Administration (GSA) for telecommunications equipment and services.

We deny the protest.

The RFP contemplated the award of an indefinite quantity/indefinite delivery, fixed-price contract for telecommunications equipment and services for GSA's southeast region states of Georgia, Kentucky, and Tennessee. The solicitation required proposals to include a detailed price breakdown on 41 pages of pricing tables and specified that those tables were to be submitted in electronic spreadsheet format, in addition to hard copies. The RFP indicated that offerors could obtain from the agency a computer disk containing the pricing tables formatted using a spreadsheet program.

The agency reports that several offerors experienced problems with the government formatted disks. For instance,

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some disks could not be read due to exposure to a detection device used by the Postal Service. The agency addressed this concern by providing new disks. In addition, some offerors experienced problems printing from the disks. As a result of this concern, in RFP amendment No. 03, dated February 1, 1995, the agency indefinitely extended the closing date and informed offerors that a subsequent amendment would be issued to establish a new closing date. Amendment No. 03 also stated that a subsequent amendment would answer offeror questions, and that "[o]nce an amendment is issued you will have only 5 workdays to address problems pertaining to the diskette. No further technical questions will be accepted." Amendment No. 04, issued on February 9, set the closing date for March 3 and provided information on how the disks were formatted and the type of printer the government had used to successfully print off the disk. Amendment No. 05 finally established the closing time as 2 p.m. on March 10, 1995.

The agency received six timely proposals. Spectronics's proposal was submitted at 2:11 p.m., after the required closing time. The agency rejected the proposal as late.

Spectronics primarily argues that its offer was submitted late as a result of the computer disk, which the protester states the agency admitted was defective. Spectronics explains that on March 9, after entering its prices into the spreadsheet, the firm attempted to print hard copies of the tables for submission with its proposal. According to Spectronics, it was unable to accomplish this and, on the morning of March 10, the firm attempted to contact the agency representative listed in the RFP for assistance with printing. The firm was unable to reach the designated individual until 11:30 a.m. Spectronics maintains that the agency's representative acknowledged that other prospective offerors were having problems printing the tables and that he had provided the government's password for the spreadsheet program to at least one firm so as to allow that firm to bypass the write protection format in the program and realign the tables. Spectronics also states that when it became clear that the disk could not produce the required hard copies, the firm delivered its proposal, without hard copies. Spectronics argues that, if the disk had functioned properly, its proposal would have been submitted on time and therefore its proposal should be considered since the agency was responsible for it being submitted late.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time and late delivery generally requires that a proposal be rejected. Federal Acquisition Regulation (FAR) § 15.412; see Robert R. Nathan Assocs., Inc., B-230707, June 28, 1988, 88-1 CPD

¶ 615. A late hand-carried proposal may be considered where improper government action was the paramount cause for the late submission, and consideration of the proposal would not compromise the integrity of the competitive procurement process. See Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id. In determining whether that standard is met, we take into account whether the offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Id.

In this connection, prospective offerors bear an affirmative duty to make every reasonable effort to obtain solicitation materials necessary to submit timely, acceptable proposals. For example, under a solicitation which required the use of a computer disk for proposal preparation, the protester did not avail itself of every reasonable opportunity to obtain solicitation materials where, despite being provided a solicitation package 14 days prior to the closing date, the offeror did not load the disk into a computer to verify its contents until the evening before closing. Latins Am., Inc., 71 Comp. Gen. 436 (1992), 92-1 CPD ¶ 519.

In this case, Spectronics did not avail itself of every reasonable opportunity to obtain the requisite solicitation materials. Spectronics initially obtained its disk in early January and received a revised disk with amendment No. 02, which was issued on January 18. The solicitation required offerors to use the computer disk in submitting their proposals and, notwithstanding the need for a correctly formatted disk, Spectronics did not attempt to print from the disk until approximately 6 weeks after receiving the disk, on the day before closing. In our view, Spectronics should have examined the disk and attempted to print from the disk more than a day before proposals were due.¹ Spectronics's delay in testing the disk contributed to its inability to submit a timely proposal. Even if the agency-furnished disk was defective, had Spectronics examined and tested the disk within a reasonable period after receipt, it could have discovered any defect and obtained a replacement in time to submit a timely proposal. See Latins Am., Inc., supra.²

¹Other offerors tested their disks and contacted the agency for assistance at a much earlier time.

²Although Spectronics did not attempt to print from the disk until it received its suppliers' quotations on the day
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offerors may have manipulated the spreadsheet. Such speculation provides no basis for challenging the agency's actions. See Aviation Sys. Mfg., Inc.--Recon., B-241180.2, Feb. 1, 1991, 91-1 CPD ¶ 104.

The protest is denied.

/s/ Christine S. Melody
for Robert P. Murphy
General Counsel