



Decision

Matter of: Rehal International Transportation

File: B-401090

Date: April 7, 2009

Anthony J. Coleby, Esq., REHAL International Transportation, for the protester.
Leslie A. Nepper, Esq., and Major Walter R. Dukes, U.S. Army Materiel Command, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's rejection of the firm's proposal is denied, where solicitation provided for the submission of technical and price proposals to different locations and the protester failed to deliver its price proposal to the office identified for receipt of that proposal.

DECISION

Rehal International Transportation protests the rejection of its proposal by the Department of the Army under request for proposals (RFP) No. W52P1J-08-R-0167 for bulk fuel transportation from Camp Buehring, Kuwait to Camp Bucca, Iraq.

We deny the protest.

Offerors were instructed to submit technical and price proposals in separate volumes to two different locations. Specifically, the RFP directed that one copy of the technical proposal and three copies of the price proposal be submitted to headquarters, U.S. Army Sustainment Command in Rock Island, Illinois by 2 p.m., November 28, 2008, and that three copies of the technical proposal be submitted to Camp Arifjan, in Kuwait, by 5 p.m., November 28. RFP at 43. The RFP identified a recipient and address at each of these locations for the delivery of proposals.¹ The

¹ The RFP informed offerors that, if they electronically delivered their proposals, the hard copies of their proposals must be sent to Rock Island by 2 p.m., December 1, and to Camp Arifjan by 5 p.m., November 28.

RFP also authorized the electronic delivery of proposals to these two locations and identified an email address at Rock Island for submission of electronic proposals. Offerors were also informed that

[d]ue [to] the uncertainty of delivery within Kuwait, proposal submission deadlines will be based on the submissions to . . . at HQ [headquarters] US Army Sustainment Command. Any proposals received after the dates and times for submission and delivery to HQ US Army Sustainment [Command] will be considered a late submission and treated as such.

RFP at 42.

The solicitation was amended twice. The first amendment included, as relevant here, the following question and answer:

Q: Is it possible to drop off a proposal at Camp Arifjan in person? If so how is this arranged?

A: Yes, proposals may be taken to the LOGCAP Office building 752
Attn: [named officials] for signature.

RFP amend. 1, at 2.

The agency received six timely proposals and five untimely proposals at Rock Island. Contracting Officer's Statement at 1. Rehal delivered, in hard copy, four copies of its technical proposal and four copies of its price proposal to Camp Arifjan, id., and no copies of its proposals to the U.S. Army Sustainment Camp at Rock Island. Because the evaluators at Camp Arifjan were not to see or evaluate offerors' price proposals, the copies of Rehal's price proposal that were delivered to Camp Arifjan were destroyed. Id. Only those proposals that were timely received by the Army Sustainment Command in Rock Island (which did not include Rehal's proposal) were evaluated and considered for award. Id. at 2. Contract award was made to PWC Logistics Services Company KSC(c) on January 7, 2009. After learning that its proposal had not been considered for award, Rehal protested to the agency, arguing that amendment 1 required delivery only to Camp Arifjan. The Army denied the agency-level protest, and this protest to our Office followed.

Rehal objects in its protest to our Office that its proposal was "mislaidd following delivery and consequently was not evaluated," arguing that it was "clearly stated under Amendment 0001 to the Solicitation that all required documentation required to be submitted" could be delivered to Camp Arifjan. In this regard, Rehal complains that the proposal delivery instructions were very complicated and misleading.

We do not agree with Rehal that amendment 1 changed the RFP delivery instructions that required offerors to submit their technical and price proposals to two different

locations. Rather, reading the relevant question and answer included in amendment 1 within the context of the RFQ as a whole, the solicitation informed offerors that they were still required to submit one copy of their technical proposal and all of the copies of their price proposals to the Army Sustainment Command at Rock Island.² In this regard, the RFP, as amended, continued to inform offerors that receipt of proposals by the Army Sustainment Command at Rock Island, the only location that was designated to receive both the technical and cost proposals, would determine whether offerors' proposals were timely submitted.

Here, it is undisputed that the protester did not deliver its technical and price proposals to the Army Sustainment Command at Rock Island, as directed by the RFP, for the purpose of establishing the timeliness of the proposal. It is an offeror's responsibility to deliver its proposal to the proper place by the proper time. Shirlington Limousine & Transp., Inc., B-299241.2, Mar. 30, 2007, 2007 CPD ¶ 68 at 2. Because Rehal did not submit its proposal in accordance with the solicitation instructions, we find reasonable the Army's rejection of Rehal's proposal.³

With respect to Rehal's complaint that the RFP's proposal instructions were complex and that it was misled by the solicitation's instructions, even were we to accept Rehal's arguments, these arguments, at best, would establish a patent ambiguity, *i.e.*, one that is obvious from the face of the solicitation. Offerors have an affirmative obligation to seek clarification prior to the first due date for submission of proposals following introduction of an ambiguity into a solicitation. *See* Bid Protest Regulations, 4 C.F.R. 21.2(a)(1) (2008). Protests of a patent solicitation ambiguity that are not filed before the time set for receipt of initial proposals are untimely and will not be considered by our Office. *See Kellogg Brown & Root, Inc.*, B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96; *Bank of Am.*, B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. The requirement that protests of patent

² In interpreting solicitation language, we will read the solicitation as a whole and in a manner that gives effect to all of its provisions. *See The Boeing Co.*, B-311344 *et al.*, June 18, 2008, 2008 CPD ¶ 114 at 35.

³ The circumstances here are distinguishable from our decision in Abt Assocs. Inc., B-226063, May 14, 1987, 87-1 CPD ¶ 513, wherein the RFP required copies of complete proposals to be submitted to two separate locations in Africa, and we found that an offeror's failure to timely deliver copies of its proposal to one of the locations could be waived as an informality or minor irregularity. Here, although the RFP required delivery to two locations, cost proposals were to be submitted only to Rock Island—the location to which Rehal submitted no proposal—and expressly provided that “proposal submission deadlines will be based on the submissions to [Rock Island]” and that “[a]ny proposals received after the dates and times for submission and delivery to [the Rock Island office] will be considered a late submission” RFP at 42.

ambiguities be filed prior to time set for receipt of initial proposals is intended to facilitate clarification of legitimate questions prior to preparation of submissions. Since Rehal sought no such clarification of this matter prior to responding to the solicitation, its complaints about being misled by the solicitation instructions are untimely.

The protest is denied.

Gary L. Kepplinger
General Counsel