



## Decision

**Matter of:** Metters, Incorporated

**File:** B-403629

**Date:** November 10, 2010

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Joel E. Roberts, Esq., and Brian E. Smith, Esq., GrayRobinson, P.A., for the protester. Sonja C. King, Esq., Department of the Army, for the agency. Christina Sklarew, Esq., and Guy R. Petrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the contracting agency should not have rejected the protester's proposal as late is denied, where the protester failed to submit a complete copy of its and its subcontractors' proposals in the correct format to the agency by the closing time for receipt of proposals.

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### DECISION

Metters, Incorporated, of Orlando, Florida, protests the rejection of its proposal as late by the Department of the Army under request for proposals (RFP) No. STOCII-10-KOV-015, which provides for the issuance of a delivery order for the design, development, fabrication, test and delivery of a virtual training system for dismounted soldiers.

We deny the protest.

### BACKGROUND

In January 2009, the Army awarded multiple indefinite-delivery, indefinite-quantity (ID/IQ) contracts for simulation and training products and services. The agency issued the RFP here to conduct a competition for the issuance of a delivery order on a best-value basis for a virtual training system under one of the contractor's ID/IQ contracts.

Detailed instructions for the submission of proposals were provided, and, as amended, the RFP required that proposals be received by the agency at the Army's Program Executive Office for Simulation, Training and Instrumentation (PEO),

3100 Technology Parkway, Orlando, Florida, no later than 3 p.m. on July 1, 2010. RFP amend. 1, at 1. Offerors were instructed that “[t]he proposal shall be submitted in three sets of two [compact discs] CDs each,” i.e., three copies of a technical volume and three copies of the cost volume. RFP, Proposal Submission Instructions, at 1. In addition, the RFP expressly stated that paper copies were not authorized, and that offerors were not permitted to submit their proposals by email or facsimile. Id. Offerors were further instructed that where the offeror proposed to subcontract more than \$650,000 of the work to a subcontractor under a cost reimbursable contract line item (CLIN), then the offeror was required to submit a cost breakdown and cost proposal for that subcontractor. The RFP also stated that if a subcontractor considered its data to be proprietary, the subcontractor’s cost proposal could be submitted directly to the contracting officer with a redacted copy and notification submitted to the offeror. Id., at 12.

On the specified closing date, at approximately 2:13 p.m., one of the protester’s proposed subcontractors attempted to deliver its cost proposal to the agency’s contract specialist (the designated point of contact) by email. The contract specialist responded by email to the subcontractor at 2:27 p.m. that submission of the proposal by email was not authorized and that the proposal must be received by the agency by 3 p.m. that day by hand delivery or mail. Agency Report (AR), Tab 6, Contract Specialist’s Affidavit, at 1, Protest at 6. At approximately 2:30 p.m., the contract specialist also called the protester’s contracts manager and told him that the subcontractor’s submission was unacceptable. Protest at 6.

At approximately 2:45 p.m. on July 1, the protester and one of its subcontractors arrived at the specified address and called the contract specialist; the contract specialist met Metters at approximately 2:57 p.m., at which time Metters submitted the protester’s proposal on six CDs (including three copies, each, of the technical and cost proposal CDs) and sealed, printed copies of its two subcontractors’ proprietary cost information and proposals.<sup>1</sup> Protest at 7. The contract specialist returned the sealed envelope with the subcontractors’ proposals and informed the protester that paper proposals, including the subcontractors’ submissions, were not permitted under the RFP. AR, Tab 6, Contract Specialist’s Affidavit, at 1; Protest at 7. According to the protester, and disputed by the contract specialist, the contract specialist assured Metters and its subcontractor that they would be permitted to submit the subcontractors’ proposals after the deadline had passed. Metters

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<sup>1</sup> The contract specialist states that she met Metters at 2:59 p.m. AR, Tab 6, Contract Specialist Affidavit, at 1.

submitted its subcontractors' submissions on CDs to the agency after 3 p.m.<sup>2</sup> The contracting officer determined that Metters's proposal was incomplete as initially submitted, given that it did not include the subcontractors' proposals as required by the RFP, and Metters's complete proposal, with subcontractors' proposals, was late.

## DISCUSSION

Metters protests that its proposal should not have been rejected as late, arguing that a complete copy of its proposal (with the paper versions of the subcontractors' proposals) was submitted to the agency before 3 p.m. Metters contends that, to the extent that its proposal was considered late because it did not submit its subcontractors' proposals on CDs until after 3 p.m., the RFP was ambiguous as to what format must be used for the submission of the subcontractors' proposals. Protest at 9.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of a proposal. Slates Roofing Corp., B-286052, Nov. 8, 2000, 2000 CPD ¶182 at 4. The late proposal rule alleviates confusion, ensures equal treatment of offerors, and prevents one offeror from obtaining a competitive advantage as a result of being permitted to submit a proposal later than the deadline set for all competitors. Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3; Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD ¶ 366 at 5-6.

Here, the record shows that the agency did not receive a complete proposal in the correct format from Metters until after the closing time specified in the solicitation, and therefore its proposal was late.<sup>3</sup> Although Metters notes the agency had received all but the subcontractors' proposals by the 3 p.m. closing time, offerors were required to submit their complete proposal to the agency by the closing time, and timely delivery of part of a proposal does not constitute the timely submission of the proposal. See Inland Serv. Corp., Inc., supra, at 3-4.

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<sup>2</sup> At 3:15 p.m., one of Metters's subcontractors submitted its proposal to the agency on three CDs, and Metters attempted to submit the remaining subcontractor's proposal on a single CD, which the agency did not accept because the RFP required three copies. Metters ultimately submitted three copies (on CDs) of the subcontractor's proposal at 4:10 p.m. AR, Tab 6, Contract Specialist's Affidavit, at 2.

<sup>3</sup> Metters does not contend that the protester's proposal could be considered technically acceptable without the subcontractors' cost proposals.

We do not agree that the protester's late submission of a complete proposal was caused by some ambiguity in the RFP.<sup>4</sup> A solicitation ambiguity exists where two or more reasonable interpretations of the terms of the solicitation are possible. Ashe Facility Servs., Inc., B-292218.3; B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10.

Here, the RFP stated that:

If any of the work under the cost reimbursable CLIN will be subcontracted for \$650,000 or more, the subcontractor(s) shall prepare and submit a cost breakdown and cost proposal. If the subcontractor(s) considers the data to be company proprietary, the cost proposal shall be submitted directly to the Contracting Officer with a concurrent redacted copy and notification to the offeror.

RFP, Proposal Submission Instructions, at 12. This provision simply informed offerors that they would be required to submit separate proposals for their major subcontractors under the cost reimbursement CLIN, and did not address what form those proposals must take. Rather, the proposals' format was addressed elsewhere in the RFP's proposal preparation instructions, where offerors were instructed that they must submit their proposals on CDs, that paper copies were not permitted, and that submission of proposals by email or facsimile was not authorized.<sup>5</sup> See id. at 1.

In short, we find that the RFP required that subcontractors' proposals, like the offerors' own proposals, be submitted on CDs. Because Metters did not deliver its subcontractors' proposals on CDs to the agency until after the specified closing time, its proposal was late.

Metters also argues that its late proposal should have been considered by the agency under Federal Acquisition Regulation (FAR) § 15.208(b)(1)(ii), which provides an exception for late proposals where there is evidence establishing that the late proposal was received at the government installation designated for receipt and was under the control of the agency prior to the time set for receipt of proposals. Even

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<sup>4</sup> To the extent that Metters is arguing that the requirement to submit subcontractors' proposals on CDs is inconsistent with the proposal's requirement that offerors submit no more than six CDs (consisting of three copies each of the technical proposal and the cost proposal), this would be, at best, a patent ambiguity that Metters was required to protest prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2010).

<sup>5</sup> We note that Metters does not argue that the RFP permitted the submission of subcontractors' proposals by email.

assuming the application of this provision to the task order competition here,<sup>6</sup> Metters failed to deliver a complete proposal in the correct format into the agency's control prior to the closing time for receipt of proposals. Thus, this exception to the late proposal rule does not provide a basis for considering the protester's proposal.

Metters also argues that, because the contract specialist informed its subcontractor that it could submit its proposal after the specified closing time, this effectively waived the RFP's proposal submission time. The Army disputes that its contract specialist informed Metters that the agency would consider the subcontractor's proposal submitted after the closing time for receipt of proposal. We need not resolve this conflict because the contract specialist does not have the authority to amend the solicitation or waive the deadline for proposal submission. See Heath Constr., Inc., B-403417, Sept. 1, 2010, 2010 CPD ¶ 202. Moreover, such a waiver or amendment of the closing time for receipt of proposal for only one offeror would be wholly inconsistent with the purpose of the late proposal rule, which is intended to assure fair and equal treatment of offerors.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel

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<sup>6</sup> Although both the Army and Metters refer to FAR Part 15 in their respective arguments concerning Metters' late proposal, we note that this procurement was a delivery order competition conducted under FAR Part 16.5, and that the RFP indicated that policies and procedures of FAR Part 15 were not being imported. See RFP, Proposal Submission Instructions, at 11.