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**Comptroller General
of the United States**

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

Decision

Matter of: Johnson Controls Government Systems, LLC

File: B-411862.2

Date: November 24, 2015

David R. Johnson, Esq., Josh S. Johnson, Esq., and Jenny J. Yang, Esq., Vinson & Elkins LLP, for the protester.

Gabriel D. Soll, Esq., Kevin R. Hilferty, Esq., Adam DeDent, Esq., Kimberly J. Graber, Esq., Department of Energy, for the agency.

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DIGEST

Protest that agency improperly rejected proposal as late is denied where record shows that protester failed to follow the solicitation's instructions for submitting its proposal, and as a consequence, protester failed to relinquish control of its proposal until after the deadline for submitting proposals.

DECISION

Johnson Controls Government Systems, LLC, of Milwaukee, Wisconsin, protests the rejection of its proposal under request for proposals (RFP) No. DE-SOL-0006380, issued by the Department of Energy (DOE) for personnel, facilities, equipment, materials, supplies and services in connection with performing energy savings performance contract (ESPC) projects. Johnson Controls argues that the agency improperly rejected its proposal as late.

We deny the protest.

The solicitation contemplates the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts that will be available for use by other federal agencies to issue task orders to perform ESPC projects such as the installation of energy and water conservation projects, or the acquisition of renewable energy technologies. The agency used a proposal submission web portal known as FedConnect. RFP, Amendment No. 3, at 81. FedConnect is a third-party, commercial centralized web portal where vendors seeking to conduct business with the federal government can search for contract opportunities. Vendors also can submit solicitation responses

directly through the FedConnect system. The RFP established a deadline for submitting proposals of May 13, 2015. RFP, Amendment No. 2, at 1.

As explained in the FedConnect tutorial, and as is relevant to the protest here, when submitting a proposal to FedConnect, firms are required to use the “response center” feature of the system. Within the response center, there is a feature called the “response builder.” FedConnect Tutorial, at 38. Firms are instructed to click the “create” button to open the response builder feature of the system. Id. This leads the offeror to a webpage that is comprised of six “tabs,” including “cover page,” “pricing,” “attachments,” “cost sensitive attachments,” “summary,” and “complete.” Id. at 39. The first five tabs correspond to portions of an offeror’s proposal that the offeror must upload to the FedConnect system. The FedConnect tutorial describes the “complete” tab as follows:

Complete: This is where you actually submit the response to the government. To send the response along with any attachments you may have added, click **Submit Response to Agency**. Once submitted, the response will become read-only and the record of when you submitted the response along with when the agency picked it up will display on this tab.

Id. (emphasis in original). The FedConnect tutorial goes on to explain that, once a response has been submitted, FedConnect will record the date and time of the submission and provide the offeror with a confirmation page that includes that data. FedConnect Tutorial at 42.

The facts of this case are not in dispute. The record shows that Johnson Controls’ employee uploaded the various portions of the firm’s proposal in the response builder on May 11 and 12, 2015. Letter of Protest at 7. At that point in time, the response builder showed the various tabs of the Johnson Controls proposal as “in progress” as of the date each proposal section had been uploaded to the system. Id. The protester represents that its employee understood the “in progress” display to mean that, although the proposal had been uploaded to the FedConnect system, it had not yet been accessed by the agency. Id.

However, Johnson Control’s employee failed to click the “submit response to agency” button, as directed in the FedConnect tutorial. Accordingly, Johnson Controls did not receive the confirmation page that the system would have generated had the proposal actually been submitted. Thereafter, on May 18, the protester contacted the agency to inquire whether its proposal had been received by the agency. After being advised that the agency had not received its proposal, the protester contacted the FedConnect help desk and received assistance regarding submission of the firm’s proposal. Letter of Protest at 10. After receiving that assistance, the Johnson Controls employee clicked the “Submit Response to Agency “ button, and the proposal was submitted to FedConnect the evening of

May 18--five days after the May 13 due date. Id. The agency rejected the proposal as late and, after filing a protest with the agency that was denied, Johnson Controls filed a protest with our Office.

Johnson Controls argues that the RFP did not require it to complete the submission of its proposal by clicking the “Submit Response to Agency” button in FedConnect. According to the protester, it reasonably interpreted the RFP as requiring only that its proposal documents be “uploaded and received” in the FedConnect system in order for it to complete the proposal submission process. In support of its position, Johnson Controls directs our attention to the proposal submission instructions of the RFP that provide as follows:

Submission of Proposals. Proposals shall only be accepted through FedConnect. It is imperative that the Offeror read and understand how to submit its quote using the FedConnect web portal by going to www.fedconnect.net. All proposal documents required by this solicitation must be uploaded and received in their entirety in the FedConnect Responses web portal no later than April 29, 2015 [subsequently extended to May 13, 2015 by RFP amendment No. 2]. Proposals submitted via hardcopy, email, or the FedConnect Message Center shall not be accepted or considered. Failure to submit a response that is received through the FedConnect Responses web portal by the stated time and date may result in the proposal not being considered. By submitting a proposal, the Offeror agrees to comply with all terms and conditions as set forth in this solicitation.

RFP at 83 (emphasis supplied). The protester focuses on the language emphasized above in maintaining that it reasonably concluded that it was only required to ensure that its proposal was “uploaded and received” in the FedConnect system in order to comply with the proposal submission instructions. The protester argues that any information included in the FedConnect tutorial was not part of the solicitation’s proposal submission instructions.

We find no merit to this aspect of Johnson Controls’ protest. The protester’s allegation essentially is that the RFP was ambiguous about whether or not the company was required to click the “Submit Response to Agency” button in the FedConnect system in order to complete the proposal submission process. Where, as here, a party alleges that a solicitation provision is ambiguous, the party must show that its interpretation of the provision is reasonable, although the proffered interpretation need not be the most reasonable one. Poly Pacific Technologies, Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3. A reading of the RFP’s proposal submission instructions demonstrates that the protester’s interpretation is not reasonable.

The first two sentences of the proposal submission instructions make it completely clear that the only way to submit a proposal is through the FedConnect system, and that offerors are responsible for ensuring that they understand how to submit a proposal using the FedConnect system. The RFP expressly cautions offerors as follows: “It is imperative that the Offeror read and understand how to submit its quote using the FedConnect web portal by going to www.fedconnect.net.” RFP at 83. That sentence includes a link to the FedConnect homepage, which, in turn, includes a link to the FedConnect tutorial. Although the protester suggests otherwise, this sentence effectively incorporated the FedConnect tutorial into the proposal submission instructions. As we pointed out in our decision in Onsite OHS, B-406449, May 30, 2012, 2012 CPD ¶ 178 at 4:

Where the protester did not avail itself of the FedConnect tutorial, or otherwise educate itself on the functionality of the FedConnect system, the protester bore the risk of improper use of the system, and of the failure of its proposal to reach the proper place of receipt at the proper time.

As noted above, the FedConnect tutorial provided express instructions about how to complete the submission of a proposal, namely, that the offeror had to click the “Submit Response to Agency” button in order for the proposal actually to be submitted. In effect, therefore, it was not enough, as the protester contends, for it merely to ensure that its proposal was “uploaded and received” in the FedConnect system. The protester also was required by the proposal submission instructions to click the “Send Response to Agency” button in order to complete the proposal submission process. We therefore deny this aspect of Johnson Controls’ protest.

Johnson Controls argues alternatively that its proposal can be accepted because it effectively was in the government’s control as soon as the protester completed uploading its proposal to the FedConnect system on May 12, the day before the deadline for submitting proposals. The protester points out that, the FedConnect system shows the history of its activities on the website. Johnson Controls maintains that, because that history shows that it did not access and edit its proposal after it completed uploading it on May 12, the fact that it ultimately did not submit it until May 18 is immaterial, since it effectively completed uploading the proposal before the submission deadline.

We also find no merit to this aspect of Johnson Controls’ protest. In determining whether or not a late-submitted proposal was “under the Government’s control” prior to the time set for receipt of proposals, we consistently have held that an offeror must, at a minimum, have relinquished custody of the proposal to the government. B&S Transport, Inc., B-404648.3, April 8, 2011, 2011 CPD ¶ 84 at 4; see also Immediate Systems Resources, Inc., B-292856, Dec. 9, 2003, 2003 CPD ¶ 227 at 3-4. This requirement precludes any possibility that an offeror could alter, revise or

otherwise modify its proposal after other offerors' competing proposals have been submitted. Id.

Here, the record shows that, because Johnson Controls did not click on the "Submit Response to Agency" button, it was free to edit or modify its proposal beyond the deadline for submission. The FedConnect tutorial expressly states that clicking the "Submit Response to Agency" button converts the uploaded proposal into a "read only" document, that is, one that cannot be edited or modified. FedConnect Tutorial, at 39. The record therefore shows that Johnson Controls did not relinquish control of the proposal until May 18, after the deadline for submitting proposals.

The fact that the protester here did not actually alter its proposal does not require the agency to accept it. As stated above, the requirement for the offeror to have relinquished control of the proposal to the government is necessary in order to preclude any potential that the proposal could have been altered. B&S Transport, Inc., supra. In addition, by not relinquishing control over its proposal, the protester was afforded an additional five days in which to decide whether to submit its proposal, which arguably provided the protester with a competitive advantage over the other offerors.¹ We therefore deny this aspect of Johnson Controls' protest.

The protest is denied.

Susan A. Poling
General Counsel

¹ We point out that we recently decided another case in connection with this same acquisition, and we sustained that protest, in part, because the record established unequivocally that the offeror had relinquished control over its proposal before the deadline for submitting proposals. AECOM Technical Services, Inc., B-411862, Nov. 12, 2015, 2015 CPD ¶ ____.