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

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Decision

Matter of: Tele-Consultants, Inc.

File: B-414135

Date: February 27, 2017

James S. DelSordo, Esq., Argus Legal, PLLC, for the protester.
David B. Mercier, Esq., and Jean-Paul A. Nasser, Esq., Naval Sea Systems Command, for the agency.
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal is denied where the proposal was not received at the specified location prior to the time set for receipt of proposals.

DECISION

Tele-Consultants, Inc. (TCI), of Alpharetta, Georgia, protests the rejection of its proposal as late under request for proposals (RFP) No. N00024-16-R-3321, issued by the Department of the Navy, Naval Sea Systems Command, for support services for the Naval Undersea Warfare Center. TCI contends that its proposal was timely submitted and under the government's control prior to the time set for receipt of proposals.

We deny the protest.

BACKGROUND

On September 28, 2016, the Navy issued the RFP to small business holders of the SeaPort-e multiple award indefinite-delivery/indefinite-quantity (ID/IQ) contract. RFP, Amend. 1, at 3.¹ The RFP contemplated the issuance of a task order on a

¹ Our Office assigned consecutive page numbers to this document.

best-value basis. Id. at 3, 62. The RFP required the electronic submission of proposals via the SeaPort-e portal² by the closing time of 2:00 p.m. Eastern Time on November 8, 2016. Id. at 1. Offerors were required to comply with the solicitation's instructions for uploading proposals and attachments through the portal. Id. at 55.

As relevant here, the solicitation required contract holders to comply with instructions for submitting a proposal in the SeaPort-e portal outlined in the SeaPort-e multiple award contract (SeaPort-e contract) and the SeaPort Vendor Portal User Guide (SeaPort guide).³ Id.; Legal Memorandum at 3. Specifically, the SeaPort-e contract states that contractors will have access only to the contractor side of the portal. AR, Exh. 2, Clause H.5 of SeaPort-e Multiple Award Contract, at 3. The SeaPort-e contract also advises that an offeror's representative, or "authorized user," will be required to confirm his or her intention to engage in a legally binding electronic action. Id. In this regard, when a user intends to take an action that is legally binding (such as submitting a proposal), the portal displays a notice and requires the user to confirm the request before the system will complete the request. Id. Additionally, the SeaPort-e contract states:

When the authorized user indicates that the proposal is ready for submission, the system prompts the user to confirm the intent to electronically sign and submit the proposal materials. Entering an affirmative/confirmatory response to this prompt is an electronic signature on the proposal materials, and constitutes the electronic submission of a legally binding offer by the Contractor.

² The Navy's SeaPort-e portal provides a standardized means for competitively soliciting, awarding, and managing task orders from a diverse population of businesses and their approved team members. Legal Memorandum at 1.

³ The SeaPort guide provides detailed instructions for using the SeaPort-e portal to vendors holding multiple award ID/IQ contracts. Legal Memorandum at 1. As relevant here, the SeaPort guide indicates that engaging the "Submit Signed Proposal" button submits a proposal. Agency Report (AR), Exh. 1, SeaPort Guide, at 24. The guide also states that before submitting a signed proposal, an offeror must accept an agreement to legally bind the company to its submission. Id. As also relevant here, the SeaPort guide indicates that proposals will no longer be accepted once an event, i.e., an invitation to submit proposals in response to a solicitation, reaches the closing time set in the solicitation. Id. at 2, 13, 16. The guide provides that when the invitation to submit proposals closes, all users with draft proposals who have not submitted a final proposal prior to closing will receive an "event closed" notification. Id. at 34. The agency states that TCI had access to the SeaPort guide through the portal. Legal Memorandum at 2. TCI does not challenge this statement.

Id. at 4 (emphasis added).

The SeaPort-e contract also states that once a legally binding proposal is submitted to the portal, the system stores a “locked down” copy of the information, which cannot be altered or modified in any way. Id. at 3. In other words, converting a draft proposal to a signed proposal bars any further alterations to the proposal.⁴ Contracting Officer (CO) Statement at 2. In the event the portal is not functioning properly, offerors are directed to contact the CO prior to the closing time established in the solicitation. Id.

By the time set for closing, three final proposals were submitted through the portal. The protester’s proposal was not among them. Legal Memorandum at 5. Instead, the protester’s proposal remained in the draft proposal section of the portal, i.e., the protester did not engage the “Submit Signed Proposal” button before the closing time.

The agency explains that its system server logs for portal activity show that on November 8, the closing date, the protester’s senior contract analyst and president attempted to engage the “Submit Signed Proposal” button two separate times, at 23 and 34 seconds after the 2:00 p.m. closing time, respectively. AR, Exh. 4, Declaration of SeaPort-e Program Manager, at 2. The protester states that after the time set for receipt of proposals, TCI contacted the CO by telephone and email to inform the CO that “TCI’s proposal was timely submitted and it was intended to be binding on TCI.” Protest at 4. As relevant here, TCI’s email to the CO stated “[t]he [SeaPort-e portal] has not allowed us to hit the [s]ubmit button.” AR, Exh. 10, TCI Email to CO, at 1. In response, the CO sent an inquiry to the system administrator to determine whether the portal had experienced any outages, or technical connectivity issues. Legal Memorandum at 3. Neither TCI nor the system administrator reported that the portal experienced a malfunction that would have prevented an offeror from engaging the “Submit Signed Proposal” button prior to the 2:00 p.m. closing time. Additionally, at 5:34 p.m. Eastern Time, the SeaPort-e portal notified TCI by email that, “[a]n event for which you created a draft proposal has closed without you completing the final submission process. As a result, the draft will not be considered.”⁵ AR, Exh. 3, SeaPortal-e Email to TCI, at 2; Protest

⁴ Additionally, the SeaPort-e program manager states that once a solicitation closes, the portal will not allow a user to engage the “Submit Signed Proposal” button or to access any draft document that the user uploaded for the solicitation. AR, Exh. 4, Declaration of SeaPort-e Program Manager, at 2. In this regard, a proposal also cannot be accessed by a contractor after the closing time of the solicitation.

⁵ As stated above, the guide refers to the invitation to submit proposals in response to a solicitation as an event. AR, Exh. 1, SeaPort Guide, at 2.

at 2. The notice also stated that when a final proposal is submitted, the system emails a receipt indicating that the proposal was accepted by the system.

On November 18, TCI protested to our Office.⁶

DISCUSSION

TCI challenges the rejection of its proposal from consideration. Although TCI acknowledges that it “did not receive the expected notice from [the SeaPort-e portal] that its proposal was submitted,” TCI asserts nonetheless that its proposal was timely submitted. Protest at 4. TCI also argues that even if its proposal was late, its proposal should have been viewed as subject to “the government control” exception of the Federal Acquisition Regulation (FAR) § 15.208.⁷ Protest at 5. Both of TCI’s arguments contend that “the archival lock on proposal files is thus acceptable evidence to establish that [its proposal] was received at the [g]overnment installation designated for receipt of proposals, [i.e., the SeaPort-e portal,] and was under the [g]overnment’s control prior to the time set for receipt of proposals.” Protest at 5.

The agency responds that because TCI never engaged the “Submit Signed Proposal” button, TCI did not submit a signed final proposal, either prior to the submission deadline or thereafter. Legal Memorandum at 5. In addition, the agency explains that it is only when an offeror engages the “Submit Signed Proposal” button that a proposal is uploaded to the government side of the portal and becomes a signed legally binding submission.⁸ As a result, the Navy contends that TCI’s proposal was not received at the government installation and was not under the government’s control at the time of closing. *Id.* at 7-8. Further, the

⁶ Our Office has jurisdiction to hear protests related to the issuance of task orders under multiple-award ID/IQ contracts issued under the authority of Title 10, if the task order is valued in excess of \$25 million. See 10 U.S.C. § 2304c(e)(1)(B). The estimated value of this contract is \$44.6 million. We note that this protest was filed prior to the passage of the National Defense Authorization Act for Fiscal Year 2017, which raised the threshold to hear task and delivery orders from \$10 million to \$25 million. See Pub. L. No. 114-328, 130 Stat. 2000 § 835 (Dec. 23, 2016).

⁷ Although the protester and the Navy refer to FAR Part 15 in their respective arguments concerning whether TCI’s proposal should be viewed as late, we note that this procurement was conducted under FAR Part 16.

⁸ In the agency report, the agency explains that draft proposals are uploaded to the contractor side of the portal, and are only moved to the government side of the portal once the vendor engages the “Submit Signed Proposal” button. Legal Memorandum at 8. TCI does not meaningfully challenge the agency’s assertion in this regard.

agency contends that since TCI did not engage the “Submit Signed Proposal” button, it cannot know whether TCI intended to be legally bound by its proposal. Id. at 11.

In its comments on the agency report, TCI challenges the significance of engaging the “Submit Signed Proposal” button, arguing that its failure to engage the button was irrelevant because, at the time of closing, its proposal was uploaded to the correct government location, and thereby in the government’s control, as evidenced by TCI’s inability to further modify the proposal. Comments at 5-6. We disagree.

Based on the undisputed facts in the record, we conclude that TCI never actually submitted its proposal. Here, the electronic submission of a legally binding offer was not completed until an offeror engaged the portal’s “Submit Signed Proposal” button, and accepted an agreement to legally bind the company to its submission by the closing time of 2:00 p.m. Eastern Time. RFP, Amend. 1, at 1; AR, Exh. 2, Clause H.5 of SeaPort-e Multiple Award Contract, at 3; AR, Exh. 1, SeaPort Guide, at 24. Additionally, the portal does not allow a vendor to engage the “Submit Signed Proposal” button after the time set for closing--as TCI apparently tried here.

TCI does not dispute that it attempted to engage the “Submit Signed Proposal” button after 2:00 p.m. Eastern Time, and acknowledges that it did not receive notice from the portal that its proposal was submitted. See Protest at 4. Instead, the protester received an “event closed” notice stating that TCI did not complete the final submission process. Finally, the record shows that neither TCI nor the portal administrator reported technical issues that would have prevented TCI from submitting its proposal prior to the closing time. Accordingly, because TCI failed to “hit the [s]ubmit button” prior to closing--an action necessary to legally bind the offeror and to submit the proposal--we conclude that TCI’s proposal was never submitted.⁹

It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time. DJW Consulting, LLC, B-408846.3, Dec. 18, 2013, 2014 CPD ¶ 77 at 3. In addition, an agency is not required to consider a proposal where, as here, there is no evidence that the proposal was “actually received.” See Federal Acquisition Servs. Team, LLC, B-410466, December 31, 2014, 2015 CPD ¶ 20 at 4. Based on

⁹ Based on this conclusion, we find that none of the late proposal exceptions under FAR § 15.208(b)(1) relied on by the protester are applicable here, even assuming the application of these provisions to a FAR Part 16 task order competition--which is a question we do not reach. See e.g., Metters, Inc., B-403629, Nov. 10, 2010, 2010 CPD ¶ 273 at 4-5. These exceptions apply where a proposal is received late and, specific to § 15.208(b)(1)(ii), is under the government’s control prior to the time set for receipt of proposals. Because we conclude that the agency received no legally binding proposal from TCI, this exception is inapplicable.

these facts, we have no basis to challenge the agency's decision that it had not received, and could not consider, TCI's draft proposal.

The protest is denied.¹⁰

Susan A. Poling
General Counsel

¹⁰ While our decision here does not specifically discuss each of the protester's various arguments, we have considered all of TCI's contentions and find none furnishes a basis to sustain the protest.