



Decision

Matter of: Western Star Hospital Authority, Inc.

File: B-414216.2

Date: May 18, 2017

Michael Johnson, Sr., Johnson & Associates, PC, for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
Frank Maguire, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably found protester's proposal to be late is denied where the electronically transmitted proposal was not received by the agency prior to the time designated for the receipt of proposals.

DECISION

Western Star Hospital Authority, Inc. (Western Star), of Atlanta, Georgia, protests the elimination of its proposal from the competition as late under request for proposals (RFP) No. W25G1V-17-R-0001, issued by the Department of the Army, for emergency medical services at the Tobyhanna Army Depot in Tobyhanna, Pennsylvania. The protester asserts that it submitted a timely proposal that was delayed en route by malfunction of the agency's email server.

We deny the protest.

BACKGROUND

The RFP, as amended, required offerors to submit proposals no later than 4:00 p.m., EST, on January 30, 2017, to the contracting officer's (CO) email address. See AR, Tab 2, RFP, at 7; RFP Amend. No. 3 at 2. Further, the RFP incorporated Federal Acquisition Regulation (FAR) clause 52.212-1(f)(2) which provides that any "offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is 'late' and will not be considered," with exceptions not pertinent here.

On the date proposals were due, prior to the 4:00 p.m. deadline, the protester emailed four proposal documents to the email address specified in the RFP for receipt of proposals. Protest exhs. 1, 2, 3, 4; AR at 3. These exhibits indicate that the emails were sent at 2:43 p.m., 2:57 p.m., 3:01 p.m., and 3:06 p.m. The agency advises, however, that it “received Western Star’s four (4) emails containing their firm’s response to the [RFP] after the 4:00 p.m. EST deadline and the close of business on January 30, 2017.” AR at 2. The four emails were time stamped by “Microsoft Office Exchange” at 6:00 p.m., 6:05 p.m., 6:06 p.m., and 6:09 p.m. AR at 2; see AR, Tab 4, at 1, 3, 5, 7.

On February 3, 2017, the agency notified Western Star that their proposal had not been received prior to the deadline and would not be considered. The agency explained as follows:

While it does appear that your firm SENT your proposal prior to the closing time, unfortunately it was not RECEIVED at the initial point of entry to the Government infrastructure until well after the deadline. We’ve had our IT department trace each email string to determine their exact position at the deadline. *** After reviewing this information it is abundantly evident that your firm’s proposal was not received prior to the deadline and is thus late and may not be considered in accordance with solicitation provision 52.212-1 Instructions to Offerors-Commercial Items.

AR, Tab 7, Email, at 1 (emphasis in original). On February 10, 2017, Western Star filed a protest with our Office.

DISCUSSION

Western Star challenges its exclusion from the competition. The protester asserts:

A timely bid package was submitted. That the [agency’s] system is not so reasonably configured that the [agency] did not in this instance receive the package until several hours after it was sent should not prejudice the Protester. The [agency] knew or should have known of potential flaws in its email receiving system or the internet in general and cautioned prospective bidders to check in some manner to confirm receipt.

Protest at 4. The protester concludes that it is “guilty of no fault,” and that “it is completely unfair and unreasonable to reject its bid because of factors beyond its control.” Id. at 4-5.

In response, the agency explained in its report that its Information Assurance Manager had conducted an investigation of the emails in question. According to the agency,

The investigation documents that each of the four (4) emails were delayed by the Protester’s email providers prior to receipt at the initial point of entry to the Government’s infrastructure. This investigation definitively proves

that the delay was not the fault or responsibility of the Government, which has no control over commercial providers used by the Protester.

AR at 4.

In its comments on the agency report, the protester disputed the agency's findings, contending that its service provider had informed it that immediately upon receiving the email messages, the service provider had sent the messages to the agency's "servers." The protester further explained that the servers were "not accessible," and that an error message "indicated a problem involving a cueing error with [the agency's] system which was unrelated to any technical failure or delay caused by Protestor or its service provider." In support of its position, the protester furnished a copy of a mail log from its service provider. Comments at 1-2.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 52.212-1(f)(1); Washington Coach Corp., B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4; Lakeshore Eng'g Servs., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. Proposals that are received in the designated government office after the exact time specified are "late," and generally may not be considered. While the rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors. See Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3.

The FAR also requires an offeror, when transmitting its proposal electronically, to ensure the proposal's timely delivery by transmitting the proposal sufficiently in advance of the time set for receipt of proposals to allow for timely receipt by the agency. Specifically, FAR § 52.212-1(f)(2)(i)(A) provides that a late proposal, received before award may be accepted if it was "transmitted through an electronic commerce method authorized by the solicitation," and it was "received at the initial point of entry to the Government infrastructure" not later than 5:00 p.m. one working day before proposals were due. Washington Coach Corp., supra, at 4.

Here, Western Star concedes, and the record indicates, that its electronically transmitted proposal was not received by the agency by the time designated for the receipt of proposals. Protest at 4; AR at 2. While the protester and the agency differ with regard to which party bears responsibility for the failure of the protester's proposal to reach the agency's initial point of entry for the agency's servers prior to the deadline, see Protest at 4-5; AR at 4, we need not resolve this issue. We have repeatedly found that it is an offeror's responsibility to ensure that an electronically submitted proposal is received by--not just submitted to--the appropriate agency email address prior to the time set for closing. See, e.g., Washington Coach Corp., supra, at 4; Latvian Connection Trading and Construction, LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 2; Lakeshore Eng'g Servs., supra, at 4. There is no dispute that the protester's proposal was not transmitted electronically by 5:00 p.m. the day before proposals were due, and was not received at the agency's servers until after the deadline for receipt of

proposals. Accordingly, we conclude that the protester has failed to satisfy its burden of showing that it timely delivered its proposal to the agency.

The protest is denied.

Susan A. Poling
General Counsel