



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: AECOM Technical Services, Inc.

File: B-411862

Date: November 12, 2015

Richard B. O’Keeffe Jr., Esq., and William A. Roberts, III, Esq., Wiley Rein LLP; and James K. Lowe, Jr., Esq., AECOM Technical Services, Inc., for the protester. Gabriel D. Soll, Esq., Kevin Hilferty, Esq., Laura L. Hoffman, Esq., Adam DeDent, Esq., and Kimberly J. Graber, Esq., Department of Energy, for the agency. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency’s decision to reject the protester’s proposal because it was submitted to an incorrect location within the FedConnect web portal is sustained where record shows that: the complete proposal was timely submitted; the agency was contemporaneously aware of the proposal’s submission; the agency plans to make multiple awards, so that no other competitor can claim to have been meaningfully harmed by accepting the proposal; the proposal was out of protester’s control and therefore could not have been altered or revised after the deadline for proposal submission had passed; and acceptance of the proposal as timely will enhance competition.

DECISION

AECOM Technical Services, Inc., of San Diego, California, 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. AECOM argues that the agency improperly rejected its proposal.

We sustain 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 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. As explained in the FedConnect tutorial, and as relevant here, the FedConnect system has two distinct communication features, a “response center” for submitting proposals in response to solicitations, and a “message center,” for asking questions related to a solicitation. Proposals were due by May 13, 2015.

The record shows that, rather than submitting its proposal to the response center, AECOM submitted its proposal to the message center on May 12, 2015, one day before proposals were due. Further, the record shows that, shortly after the protester submitted its proposal to the message center, also on May 12, the agency’s contract specialist noticed AECOM’s error. He sent a message back to AECOM’s designated employee advising AECOM as follows: “In accordance with Section L.9.d of the solicitation, proposals must be submitted through the FedConnect Responses web portal, not the Message Center, to be accepted.” Agency Report (AR), exh. B-2, Contract Specialist Message to AECOM. The protester apparently did not check the FedConnect message center after submitting its proposal, and therefore never received the contract specialist’s message regarding the proper submission of its proposal before the deadline for submitting proposals had passed. Thereafter, on July 27, the agency sent AECOM a letter advising the firm that its proposal was rejected because it had not been submitted properly to the FedConnect web portal in accordance with the instructions in the solicitation. AR, exh. B-3, AECOM Proposal Rejection Letter.¹

The protester concedes that it was its own error that led to its proposal not being properly submitted. However, AECOM maintains that the agency should nonetheless consider its proposal because it was timely submitted to the agency, and the agency was contemporaneously aware of the fact that it had been submitted. AECOM maintains that accepting its proposal will not be prejudicial to the other offerors because AECOM gained no competitive advantage from submitting its proposal to the message center rather than the response center. In

¹ In a preliminary motion to dismiss the protest, the agency argued that AECOM’s protest was untimely because it had not been filed within 10 days of the contract specialist’s message to AECOM. However, there is no evidence that AECOM actually saw the message before being advised on July 27 that its proposal was rejected. In addition, even if the protester had been aware of the contract specialist’s message, it was not until July 27 that the protester was advised that its proposal was rejected. Since its protest was filed within 10 days of AECOM being advised of the rejection of its proposal, we conclude that it is timely. 4 C.F.R. § 21.2(a)(2).

this latter connection, AECOM points out that it relinquished control of its proposal, so it was never afforded an opportunity to revise it after it was submitted. The protester therefore argues that the agency should waive the submission of its proposal to the message center rather than to the response center as a minor informality.

In support of its position, AECOM directs our attention to our decision in Abt, Assocs., Inc., B-226063, May 14, 1987, 87-1 CPD ¶ 513. In that case, the solicitation required the simultaneous submission of proposals to two locations, and the protester timely submitted its proposal to one, but not both, locations. Our Office concluded that acceptance of the proposal would be unobjectionable because Abt had timely delivered its complete proposal to the agency, such that it could be evaluated and, upon acceptance, would form a binding contract. We also concluded that none of the other offerors were prejudiced by acceptance of the Abt offer because Abt's proposal had been timely and completely submitted to the agency.

The agency responds that it properly rejected AECOM's proposal because the firm failed to follow the directions for its submission. The agency also states that the protester is attempting to shift responsibility for the final delivery of AECOM's proposal to its contract specialist, and that "moving" AECOM's proposal to the appropriate location within the agency's acquisition computing environment (known as STRIPES) imposes an administrative burden on the agency. According to the agency, the integrity of the system and the principle of fundamental fairness would be harmed if the agency accepted the AECOM proposal because it is due solely to AECOM's negligence that the proposal was not properly submitted. Finally, as to the question of prejudice, the agency states as follows:

Contrary to Protester's assertion (Protest, AR Tab E.1 at 7 of 20), competitive prejudice to the other offerors would occur as there would be increased competition for the number of awards. When many firms are vying for a few awards (the "target" established by the RFP was just 12 awards (AR Tab A.4 at 91 of 97)[)], increasing the number of proposals received will arguably decrease another firm's chance at one of those contracts.

Agency Report at 9.

Our standard in cases such as this is longstanding, and succinctly stated in Abt Assocs., Inc., *supra* at 2:

It is generally true, as AID [the Agency for International Development] states, that the government may impose conditions on offerors to the extent those conditions reflect the actual and reasonable needs of the agency. Bids and proposals that deviate from solicitation

requirements, however, need not be rejected in every instance. When the deviation involves a matter of form rather than of substance, or when the government's needs will be satisfied by acceptance of a deviating offer and other offerors would not be unfairly prejudiced by the acceptance, such an offer can be accepted.

Here, we agree with the agency that AECOM is directly and solely responsible for the improper delivery of its proposal to the message center rather than to the response center. That said, there is no question that the agency was in possession of the complete AECOM proposal before the deadline for proposal submission; that the proposal was out of AECOM's control and therefore could not have been altered or revised after the deadline for proposal submission had passed; and that the agency had actual knowledge of having received AECOM's proposal, albeit in a different electronic "location" than the location specified in the solicitation for delivery of the proposal.

In this latter connection, we recently had occasion to consider a case virtually identical to the present case, and also involving DOE's use of the FedConnect web portal. As in this case, the protester there delivered its proposal to the web portal's message center rather than its response center; the difference in the two cases is that in the earlier case the agency was unaware that the proposal had been submitted to the message center. Instead, the agency only discovered the protester's proposal several months after it had been submitted. We concluded as follows:

However, Onsite's use of the message center rather than the response center was not simply a matter of form or a minor issue--it prevented the agency from actually receiving Onsite's proposal. We see no flaw in the agency's failure to waive the improper submission of the protester's proposal where the agency had no knowledge of the proposal's existence due to an error committed by the protester itself.

Onsite OHS, B-406449, May 30, 2012, 2012 CPD ¶ 178 at 3 n.2.

Here, in contrast, the record shows that the agency timely and contemporaneously had actual knowledge that AECOM had submitted its proposal. This is demonstrated by the message from the contract specialist to AECOM on May 12, the day before the proposal submission deadline.

We also are not persuaded by the agency's suggestion that it imposes an undue administrative burden on it to accept AECOM's proposal. While we agree with the agency that AECOM is entirely at fault for the improper delivery of its proposal, we think the administrative burden imposed on the agency in accepting the AECOM proposal is not significant.

This result does not harm the integrity of the procurement system or violate the principle of fundamental fairness; AECOM submitted its proposal to the agency in a timely manner and was afforded no advantage over any other offeror when it submitted its proposal in one of the portal's electronic "locations" rather than another. Once again, while we agree that AECOM is at fault for its error, the error is, in the final analysis, a harmless one.

As a final matter, as noted, the agency suggests that the other offerors will suffer competitive harm because they will be forced to compete with AECOM if the agency accepts the protester's proposal. We note that the RFP here contemplates the award of multiple IDIQ contracts. Although the agency argues that the RFP establishes a "target" for the number of contracts the agency intends to award, there is nothing preventing the agency from making more awards in the event it concludes that an additional proposal--either one from AECOM or one from another offeror--offers a value to the government that merits the award of an additional contract. In effect, the agency is arguing that acceptance of the AECOM proposal will result in more robust competition. Inasmuch as competition is the bedrock objective of the federal acquisition system, DOE's acceptance of AECOM's proposal as timely will enhance competition.

In sum, where, as here, the record shows that a complete copy of a proposal was submitted to--and contemporaneously received by--the cognizant contracting personnel before the deadline for proposal submission; where the cognizant contracting personnel actually and contemporaneously were aware of having received it; where there is no significant administrative burden imposed on the agency by virtue of accepting the proposal; and where there is no harm in accepting the proposal, either to the integrity of the procurement system, or to the principle of fundamental fairness, the agency should accept the proposal. See Abt Assocs., Inc., supra; cf. Onsite OHS, supra. We therefore conclude based on the particular facts presented here that acceptance of the AECOM proposal is unobjectionable. In the final analysis, AECOM was afforded no advantage over other offerors in the submission of its proposal by virtue of the fact that it delivered it to the message center rather than to the response center, and acceptance of the AECOM proposal will result in enhanced, rather than diminished, competition. We therefore sustain AECOM's protest.²

In light of the foregoing, we recommend that the agency accept AECOM's proposal and evaluate it along with the other proposals received; however, we do not recommend that AECOM be reimbursed the costs associated with filing and

² We note that this is the second case that has come to our attention that arose because of confusion on the part of offerors about submitting a proposal to DOE using the FedConnect system. The agency may wish to consider providing more robust guidance on the use of the FedConnect system in future solicitations.

pursuing its protest. As noted, AECOM concedes that it was responsible for creating the problem. We therefore conclude that it would not be appropriate to recommend reimbursement of its protest costs here.

The protest is sustained.

Susan A. Poling
General Counsel