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**Comptroller General
of the United States**

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

Decision

Matter of: Lakeshore Engineering Services

File: B-401434

Date: July 24, 2009

Sarah C. Arnold for the protester.

Lori W.L. Chang, Esq., Department of the Navy, for the agency.

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DIGEST

In a negotiated procurement that required offerors to submit a portion of cost/price proposals electronically, agency's elimination of proposal from the competitive range is reasonable where the record shows that the protester electronically sent, but the agency did not receive, a portion of the protester's cost/price proposal.

DECISION

Lakeshore Engineering Services of Detroit, Michigan, protests the Department of the Navy's exclusion of its proposal from the competitive range under request for proposals (RFP) No. N62742-09-R-1170, Global Multiple Award Construction Contract (GMAC) for new construction, repair, demolition, and renovations at various locations worldwide.

We deny the protest.

BACKGROUND

The Naval Facilities Engineering Command, Pacific issued the RFP on March 5, 2009, seeking proposals to provide new construction, repair, demolition, and renovations under the GMAC indefinite-delivery indefinite-quantity contract. The RFP instructed offerors to submit their proposals in two parts, and provided two different dates and means of submission. Agency Report (AR) at 2. Offerors were to submit technical proposals and parts 1-9 of the cost/price proposals by April 21. However, the RFP specified that part 10 of the cost/price proposal was to be submitted electronically, by May 8 at 3 p.m., to the e-mail address provided in the amendment. AR, Tab 2, RFP amend. 10 at 3. The RFP incorporated by reference Federal Acquisition Regulation

(FAR) § 52.215-1, Instructions to Offerors, which provides in pertinent part as follows:

Offerors are responsible for submitting proposals . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation. . . . Any proposal, modification, or revision, 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

FAR § 52.215-1(c)(3).

The protester timely submitted the first part of its proposal on April 21. AR at 2. Lakeshore states that on May 8, prior to the deadline for submission of the second part of the proposal, the protester’s executive vice president attempted to transmit part 10 of the firm’s cost/price proposal, consisting of an e-mail with four attached files, to the e-mail address provided by the agency. Protest at 1, exh. 3 at 1. In the text of this e-mail, the protester requested that the agency acknowledge its receipt. Lakeshore states that, after sending its proposal, it received a “delivery receipt” e-mail from its e-mail server. Protester’s Comments at 2. The receipt, sent from Lakeshore’s internal postmaster e-mail address, states in the subject line, “Delivery Status Notification (Relay).” The message of the receipt states, “This is an automatically generated Delivery Status Notification. Your message has been successfully relayed to [the Navy’s proposal-submission e-mail address], but the requested delivery status notifications may not be generated by the destination.” Protester’s Comments, exh. D.

The agency did not acknowledge receipt of Lakeshore’s May 8 e-mail. Protester’s Comments at 2. On May 15, the protester again e-mailed the agency and requested acknowledgement of receipt of its May 8 submission. Protest at 2. On May 20, the contracting officer (CO) sent a letter to the protester informing it that the Navy never received part 10 of Lakeshore’s cost/price proposal, and that its proposal had been eliminated from the competitive range. Protest, exh. 1 at 1.

After receiving notice that its proposal had been eliminated from the competitive range, Lakeshore requested a debriefing. This protest followed.

DISCUSSION

The protester contends that it timely submitted part 10 of its cost/price proposal via e-mail and that its delivery receipt proves that the agency received the e-mail prior to the submission due date. In support of its argument, Lakeshore’s network administrator submitted a statement that, to the best of his knowledge, the protester’s e-mail server was fully functional and operational on May 8, and was capable of sending and receiving e-mail. Protester’s Comments, exh. E. The network administrator also confirms that it was Lakeshore’s server that generated

the delivery status notification, which the protester refers to as a “delivery receipt.” Id. The network administrator states that to the best of his knowledge, Lakeshore’s May 8 e-mail was delivered to the agency. Id. Therefore, the protester believes that the agency improperly excluded its proposal from the competitive range.¹

The Navy argues that the protester has shown only that it timely sent part 10 of its proposal, not that the proposal was timely delivered. The Navy contends that it never received the protester’s May 8 e-mail. AR, Tab 3, CO’s Statement at 3. The agency states that its e-mail system was properly functioning on May 8, and that other incoming e-mails were received in the e-mail box immediately prior to and shortly after the time that protester sent its proposal. AR, Tab 4 at 1; Tab 5 at 1. Therefore, the Navy concludes that the protester failed to timely deliver the proposal in accordance with the terms of the solicitation and FAR § 52.215-1.

The Navy’s Information Technology (IT) Specialist has submitted a statement explaining that the delivery receipt submitted by the protester is only a relay message, as opposed to a delivery message. According to the IT Specialist, relay messages indicate that an e-mail message was relayed or sent from the sending server (i.e., Lakeshore’s server).² AR, Tab 7. Thus, the IT Specialist states that the message generated by Lakeshore’s server merely confirmed that the e-mail had been sent or relayed by Landmark’s server, but it does not indicate whether the e-mail was received by the NMCI server. Id. Accordingly, the Navy argues that Lakeshore has failed to show timely delivery of part 10 of its cost/price proposal.

¹ The protester also complains that the agency unilaterally decided, in amendment 10, to change the method of proposal delivery from mail, commercial carrier, or hand delivery to e-mail only. Protester’s Comments at 3. The protester contends that, having selected e-mail as the only means of proposal submission, the agency should have advised offerors that it would send electronic confirmation of receipt of proposals. Protester’s Comments at 2-3. To the extent that Lakeshore now seeks to challenge amendment 10’s proposal submission requirements, that challenge is untimely since it concerns an alleged impropriety apparent from the face of the solicitation, which Lakeshore did not raise prior to the closing time for submission of proposals. 4 C.F.R. § 21.2(a)(1) (2009).

² The Navy’s IT Specialist explained that after an e-mail message is relayed from the sending server, an e-mail goes through a series of hops or relays before it reaches its destination server, and the number of relays varies depending on both the sending and destination servers. Further, the IT Specialist stated that it is possible for e-mails to be lost when going through relays. The Navy states that most e-mails sent from outside the Navy Marine Corps Intranet (NMCI) server are relayed several times before arriving at the NMCI server. AR, Tab 7.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 52.215-1(c)(3); PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 3. While the protester has shown that it timely sent part 10 of the proposal, there is no evidence that it was received by the agency prior to the due date for proposal submissions. As explained above, protester's "delivery receipt," which was sent by the protester's own e-mail server, confirms only that the message was successfully relayed from Lakeshore's system. It does not confirm that the proposal arrived at the agency's e-mail system.

Because there is no evidence that part 10 of the protester's cost/price proposal was successfully delivered to the agency's e-mail box prior to the due date for receipt of proposals, the protester has failed to satisfy its burden of showing that it timely delivered its proposal to the agency. Accordingly, we conclude that the agency reasonably excluded the protester's proposal from the competitive range.

The protest is denied.

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Acting General Counsel