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

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Decision

Matter of: SafeGuard Services, LLC

File: B-404910

Date: June 28, 2011

Daniel R. Forman, Esq., Puja Satiani, Esq., and Tony G. Mendoza, Esq., Crowell & Moring LLP, for the protester.

Christian P. Maimone, Esq., Department of Health and Human Services, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency improperly rejected protester's final proposal revisions (FPR) as late due to the fact that a minor subcontractor submitted a late FPR, where the agency did not determine whether the protester's FPR was acceptable without considering the subcontractor's late FPR.

DECISION

SafeGuard Services, LLC (SGS), of Plano, Texas, protests the rejection of its proposal as late by the Department of Health & Human Services, Centers for Medicaid and Medicare Services (CMS) under request for proposals (RFP) No. CMS-2009-0014 for the award of a Zone Program Integrity Contract (ZPIC) to support CMS's audit, oversight, and anti-fraud, waste and abuse efforts in geographic zone 6.¹

We sustain the protest.

¹ CMS's Zone 6 consists of Pennsylvania, New York, Maryland, District of Columbia, Delaware, Maine, Massachusetts, New Jersey, Connecticut, Rhode Island, New Hampshire, and Vermont.

BACKGROUND

CMS issued the RFP on June 12, 2009. The RFP contemplated the award of a single indefinite-delivery/indefinite-quantity (IDIQ) contract. Task orders under the contract could be issued on a cost reimbursement or fixed-price basis.

Each offeror's proposal was to consist of three volumes: a business proposal, technical proposal, and a conflict of interest and compliance program volume. The solicitation included detailed instructions regarding the preparation and submission of each of these volumes. As part of their business proposal submission, offerors and each of their subcontractors were required to submit a business proposal spreadsheet for two cost reimbursement task orders complete with the following categories of cost information: labor, travel, other direct costs, subcontracts, indirect rates, fee, and a summary rollup of all costs. Under the "Labor" category,

Offerors [and subcontractors] shall provide labor rates for all labor categories that are expected to be used in the performance of the ZPIC task order. For each labor category please show the "number of labor hours times hourly labor rate equals resultant total dollar amount" by year. ***Subcontract direct labor shall be shown in the same manner ("number of labor hours times hourly labor rate equals resultant total dollar amount"), however, under the subcontract line item.*** Such labor rates shall be projected for the base year and all option years. Please also note that there is a column for Full Time Equivalent (FTE) levels.

RFP amend. 2, § L.15.

The RFP provided that all volumes of each proposal had to be delivered in an electronic format on compact discs (CD) by 1 p.m., July 20, 2009, to the CMS Building in Baltimore, Maryland. RFP amend. 2, §§ L.1, L.10, L.12. The RFP also stated that "all proposed subcontractors shall submit a separate and complete business proposal spreadsheet in the same format as the Offeror's business proposal spreadsheet no matter the dollar amount." RFP amend. 2, §§ L.15, L.16. The solicitation contained the following provision concerning late proposals:

Late proposals will be handled in accordance with [Federal Acquisition Regulation (FAR) §] 52.215-1, Instructions to Offerors-Competitive Acquisition. For this provision, a proposal includes **all** proposal submissions from the contractor and its subcontractors (i.e., electronic copies/submissions) to **all** recipients identified in this solicitation. If any portion of the proposal (Prime Contractor AND Subcontractor) is not received by the above specified date and time, you will be contacted and advised that the proposal is not accepted for consideration.

RFP § L.12.B.

On July 20, the agency received [DELETED] proposals in response to the RFP. [DELETED] of the proposals, including that of SGS, were included in the competitive range and discussions were conducted. As part of the discussions with SGS, CMS raised some questions about the proposed costs of one of SGS's proposed subcontractors, [DELETED]. For example, CMS noted that [DELETED] cost spreadsheet contained various discrepancies, was inconsistent with SGS's proposal, and contained FTE levels for [DELETED] labor categories that appeared to be [DELETED]. Agency Report (AR), Tab H-2, Agency FPR Request to SGS (Feb. 23, 2011), attach. 1; Business Proposal and OCI Discussion Issues, at 3, 6, 9, 11, 18.

On February 23, 2011, the agency sent SGS a request for final proposal revisions (FPR). The revised technical proposal, which was to include only the revised sections, was due via e-mail on February 24. Offerors were required to submit a "complete revised business proposal" in electronic format by February 28, and provided that "any subcontractor business proposals shall also be received by the February 28, 2011 deadline." AR, Tab H-2, Agency FPR Request to SGS (Feb. 23, 2011), at 2, 8. On March 4, offerors were to submit one hard copy and four CDs of their technical, business, and OCI submissions, as well as "subcontractor business proposal sealed packages as necessary." Id. at 8.

SGS submitted its FPR by the stated deadlines. However, [DELETED] failed to submit its revised business proposal in electronic format by the February 28 deadline.² As a result of the late delivery of [DELETED] revised business proposal, the contracting officer rejected SGS's proposal as late. Agency Report, Tab J-1, CMS Letter to SGS Mar. 9, 2011. This protest followed.

DISCUSSION

SGS asserts that the agency's rejection of its FPR due to the late submission of its subcontractor was improper because, according to SGS, "even without [DELETED] revised business proposal spreadsheets, SGS's proposal was complete." Protester's Comments at 3. We agree.

Offerors are responsible for submitting proposals, and any modifications to them, so as to reach the government office designated in the solicitation by the time specified in the solicitation. Federal Acquisition Regulation (FAR) § 15.208(a). Proposals, and modifications to them, that are received in the designated government office after the exact time specified are "late," and will be considered only if received

² [DELETED] timely delivered the hard copy of its revised business proposal by the March 2 deadline.

before award, and if the circumstances meet the specific requirements of the provision at FAR § 52.215-1.³ FAR § 15.208(b). Portions of proposals that are submitted late may not be considered by the agency, and if the proposal is unacceptable as timely submitted, it should be rejected as late. See Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 4 (proposal was late and not acceptable where the technical proposal was received on time but the price proposal was late); Panasonic Comms. & Sys. Co., B-239917, Oct. 10, 1990, 90-2 CPD ¶ 279 (initial proposal was properly rejected because it did not contain a significant required bid sample). On the other hand, a proposal which does not provide all items required by the solicitation may not be automatically rejected if the proposal information received by the deadline is sufficient to constitute an acceptable proposal. See Wetlands Research Assocs., Inc., B-246342, Mar. 2, 1992, 92-1 CPD ¶ 251 at 5, n.7.

SGS contends that its proposal was acceptable, even without [DELETED] revised business proposal spreadsheets. According to SGS, [DELETED] was a minor subcontractor included for the purpose of adding [DELETED] under one of the least important non-cost evaluation factors. [DELETED] proposal included a total of [DELETED] FTEs and was [DELETED] percent of SGS's total cost. Protester's Comments at 21.

According to SGS, the changes to [DELETED] proposal were reflected in SGS's Business FPR. For example, in response to discussion questions indicating that [DELETED] may have [DELETED] proposed FTEs/hours for its [DELETED] position, SGS's FPR showed that the [DELETED] position had been [DELETED]. Protest, exh. 7, Discussion Response, at 9-11; Protester's Comments, exh. 1, SGS Bus. FPR, vol. 1, Task Order 1, at I-6; exh. 2, SGS Bus. FPR, vol. I, Task Order 2, at I-8. Moreover, SGS's FPR business spreadsheet for each task order reflects the number of FTEs, number of hours, and the total costs for each labor category (there was only [DELETED]) proposed by [DELETED].⁴ Protester's Comments, exh. 3, SGS FPR Task Order 1 Business Spreadsheet; exh. 4, SGS FPR Task Order 2 Business Spreadsheet.

³ The circumstances that permit acceptance of a proposal or modification received after the due date generally concern a submission that is timely sent, but received late due either to delays in specified mail services or to mishandling by the government, or one that is submitted late and is the only proposal received. FAR § 52.215-1. None of the exceptions stated in FAR § 52.215-1 for accepting a late proposal apply here.

⁴ For example, SGS's Task Order 1, CLIN 0002 spreadsheet reflects that [DELETED] FPR proposed [DELETED] for [DELETED] hours and a total cost of [DELETED], which is the same amount as reflected in [DELETED] revised business proposal spreadsheet.

Here, the record reflects that the agency did not consider whether SGS's FPR was acceptable without [DELETED] revised business proposal spreadsheets. AR, Tab J-1, CMS Letter to SGS (Mar. 9, 2011); Tab J-2, CMS Letter to SGS (Mar. 17, 2011) ("given the plain language in the solicitation, I believe it remains appropriate to treat the entire proposal as late when any part, no matter how small, was late."). However, as discussed above, SGS asserts that its FPR was complete and acceptable because it contained all of [DELETED] costs.

Our review confirms SGS's assertion that the information included in [DELETED] revised business spreadsheet was reflected in SGS's business proposal. Thus, [DELETED] submission could appropriately be viewed as backup supporting material for SGS's proposed costs. In addition, we note again that the [DELETED] submission at issue here represents approximately [DELETED] percent of SGS's total costs--and [DELETED] FTEs. In circumstances like these, where an agency finds that an offeror's proposed costs on a cost reimbursement contract are not reasonably supported, an agency, as part of the cost realism analysis, can adjust the proposed costs to account for this lack of supporting information.⁵ See Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13-14; Earl Indus., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 8-9; Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 10; General Offshore Corp.--Riedel Co., A Joint Venture, B-271144.2, B-271144.3, July 2, 1996, 96-2 CPD ¶ 42 at 11.

In sum, we conclude that the agency improperly rejected SGS's entire FPR as late without considering whether the proposal was acceptable without the subcontractor's revised business proposal, and we sustain the protest on this basis.

We recommend, consistent with this decision, that the agency consider whether SGS's FPR was acceptable. If SGS's FPR is determined to be acceptable, we recommend that it be reinstated in the competition. We further recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2011). The protester's certified claim for costs, detailing the time

⁵ On the other hand, proposals with significant omissions in the cost proposal that would require a major revision to address can be rejected as unacceptable. Jack Faucett Assocs., B-253329, Sept. 7, 1993, 93-2 CPD ¶ 154 at 4-6.

spent and the cost incurred, must be filed to the agency within 60 days after receiving this decision.

Lynn H. Gibson
General Counsel