

Decision

Matter of: Richen Management, LLC

File: B-419253

Date: January 12, 2021

Richard McCue, Richen Management, LLC, for the protester.
Michael K. Greene, Esq., Administrative Office of the United States Courts, for the agency.
Katherine I. Riback, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency failed to consider firm's proposal is denied where the protester cannot demonstrate that the agency received protester's proposal prior to the established due date for receipt of proposals.

DECISION

Richen Management, LLC, a small company of Dover-Foxcroft, Maine, protests the rejection of its proposal by the Administrative Office of the United States Courts (AOUSC) under request for proposals (RFP) No. NDAL-2020-01 for janitorial services. The protester contends that, although its proposal was received late, the agency should have nevertheless considered the proposal for award.

We deny the protest.

BACKGROUND

On June 16, 2020, the AOUSC publicly synopsisized the RFP on the beta.SAM.gov website, establishing a due date for proposals of July 10. Agency Report (AR), Tab 7, Beta-SAM Announcements at 1; Tab 3, RFP. Prior to the due date, the protester contacted the contracting officer by telephone, inquiring as to the proposal submission requirements. AR, Tab 12, Agency-Level Protest at 1. During the telephone conversation, the agency instructed the protester to "email in the proposal before the due date and time and then to mail the proposal there[]after." *Id.*

On July 17, the contracting officer extended the proposal due date to July 31 by sending a blind carbon copy (Bcc) email to all known offerors that had either expressed an

interest in the procurement, or previously submitted an offer.¹ AR, Tab 5, Agency Bcc Email (July 17, 2020). On July 31, the agency received 11 proposals, all of which were submitted via e-mail. Contracting Officer's Statement (COS) at 2.

The agency states that Richen's proposal was not among those received on July 31. *Id.* Rather, the agency states that it received Richen's proposal on August 7, via U.S. mail. AR, Tab 9, Richen's Proposal. On that same day, *i.e.*, August 7, the agency awarded the contract to another offeror and provided notification to unsuccessful offerors, as well as offerors that had expressed an interest in the procurement. AR, Tab 10, Notice of Award and Richen Debriefing.

The protester responded to the agency's notice, claiming that it had emailed its proposal on July 31, at 2:34 p.m. and sought reconsideration of the matter by the agency.² AR, Tab 11, Post-Debriefing Email Exchange at 1. The contracting officer requested a copy of Richen's July 31 proposal, and stated that she had checked her email inbox, as well as her "spam" and "junk" folders, and found no evidence of an email from Richen on July 31. AR, Tab 11, Post-Debriefing Email Exchange at 3. On August 12, the agency informed Richen that its proposal was determined to be untimely, and would not be considered. COS at 2.

On August 21, Richen filed an agency-level protest. AR, Tab 12, Agency-Level Protest. On August 26, the agency provided the results of an email "message trace" search it performed that found no evidence of the contracting officer having received any email proposal from Richen; this search used the email address of the contracting officer and the dates that the protester allegedly sent emails to the contracting officer.³ AR, Tab 13, Emails Discussing Trace Report; Tab 14, Email Trace Report Spreadsheet; Tab 15, Email Trace Report. The agency denied Richen's agency-level protest on September 25. AR, Tab 16, Denial of Agency-Level Protest. This protest to our Office followed.

DISCUSSION

Richen challenges the rejection of its proposal, asserting that even though its proposal was received late, it should still be considered for award as it was received via mail

¹ The agency also issued a corresponding update on the beta.SAM.gov website. AR, Tab 7, Beta-SAM Announcements at 2-3.

² The protester also stated that it had also emailed a proposal to the agency on July 17. Protest at 2.

³ The message trace investigation involved the agency's information technology department searching the contracting officer's Microsoft Outlook (email) account from July 15 to August 26, to see if the contracting officer received emails from Richen during that time frame. COS at 2; AR, Tab 13, Emails Discussing Email Trace Report at 1.

“within a reasonable time after the due date.” Comments at 2. For the reasons discussed below, we deny the protest.⁴

It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time. Federal Acquisition Regulation (FAR) 15.208; *SigNet Technologies, Inc.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 4. We have found an agency’s rejection of a proposal is reasonable where, notwithstanding a protester’s claim that it emailed its proposal to the agency, the record does not show that the proposal was actually received. See, e.g., *DJW Consulting, LLC*, B-408846.3, Dec. 18, 2013, 2014 CPD ¶ 77 at 3; *Latvian Connection Trading and Constr., LLC*, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 2.

Under FAR 15.208(b), a late proposal may be considered only where it was received before award and: (1) it was transmitted through an electronic commerce method authorized by the solicitation and was received by 5 p.m. on the working day before the specified receipt date; or (2) it was received at the government installation designated for receipt of offers and was under the government’s control prior to the time set for receipt of offers; or (3) it was the only proposal received.

Here, based upon the record before us, we find no basis to conclude that Richen’s proposal was received by the agency prior to August 7, which was after the due date for proposals.⁵ In addition, the record also shows that none of the exceptions in FAR 15.208(b) are applicable here. As such, the agency had no basis to accept the protester’s late proposal and properly refused to consider it for award.

⁴ Although we do not specifically address all of Richen’s allegations, we have fully considered all of them and find that none provide a basis on which to sustain the protest. For example, the protester contends that its proposal, received by mail after the deadline, should have been considered based upon communications the protester had with the contracting officer prior to the established deadline for proposals. Protest at 2. We have repeatedly stated that oral advice that would have the effect of altering the written terms of a solicitation, even from the contracting officer, does not operate to amend a solicitation or otherwise bind the agency, and that an offeror relies on such oral advice at its own risk. *Noble Supply and Logistics*, B-404731, Mar. 4, 2011, 2011 CPD ¶ 67 at 2-3. Thus, this argument fails to provide a basis to sustain the protest.

⁵ The protester does not dispute that the deadline for submission of proposals was July 31, 2020. Protest at 2; Comments at 2. The protester does, however, point out that the solicitation did not contain specific directions with respect to how proposals should be transmitted to the agency. *Id.* To the extent the protester argues that the lack of proposal submission instructions constituted a solicitation defect, we dismiss such an argument as untimely. Under our Bid Protest Regulations, a protest based upon alleged improprieties in a solicitation, that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). In this case, any such argument should have been raised prior to the July 31 closing date.

We reach this conclusion notwithstanding the protester's claim that it emailed its proposal to the contracting officer prior to the July 31 due date for proposals. In this regard, the protester provided a copy of an email from its own email system, which it presents as evidence of the email transmission in question. See AR, Tab 4, Initial Email Proposal as Presented by Protester (July 17, 2020); Tab 8, Revised Email Proposal as Presented by Protester (July 31, 2020). However, the document purporting to be a copy of an email, on its face, does not demonstrate that the proposal was received by the agency. On this point, we note that the record does not show--and the protester does not assert--that Richen attempted to obtain any form of agency acknowledgement of its email submission of its proposal.

In response to the protest, the agency maintains that it never received Richen's proposal via email. The contracting officer, in her statement submitted to our Office, states that she did not recall receiving Richen's proposal via email, and provides an explanation of the efforts she took to search her email records prior to deeming Richen's proposal untimely. COS at 2. Further, the agency states that it conducted an extensive search of the emails received by the contracting officer to determine whether Richen's proposal was received. AR, Tab 13, Emails Discussing Trace Report; Tab 14, Email Trace Report Spreadsheet; Tab 15, Email Trace Report. This search did not identify an email from Richen during the time period in question. COS at 2. Under the circumstances here, where the agency represents that it has made reasonable efforts to search its email system for a particular email, states that the message was not received, and the protester does not provide any basis to question the agency's representations, we find no basis to sustain the protest. See *DJW Consulting, LLC, supra* at 4-5; *Latvian Connection Trading and Constr., LLC, supra*.

Moreover, to the extent that Richen implies that agency officials may be biased against it (Comments at 1), we have consistently stated that our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8.* Government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by convincing evidence. *Lawson Env'tl. Servs. LLC, B-416892, B-416892.2, Jan. 8, 2019, 2019 CPD ¶ 17 at 5 n.5.* Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. *Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375 at 14.* The protester has not met this threshold. Here, the protester has provided no convincing evidence that the agency's actions were motivated by bias or bad faith. Instead, the protester's arguments of bias rest entirely upon speculation.

The protest is denied.

Thomas H. Armstrong
General Counsel