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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Latvian Connection Trading and Construction, LLC

File: B-402410

Date: February 25, 2010

Victor A. Kubli, Esq., Kubli & Associates, P.C., for the protester.
Maj. William J. Nelson, Department of the Army, for the agency.
John L. Formica, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's award of a contract to an offeror other than the protester is unobjectionable where the record reflects that the protester electronically sent, but the agency did not receive, the protester's proposal by the due date for receipt of proposals.

DECISION

Latvian Connection Trading and Construction, LLC, of Healdsburg, California, protests the award of a contract under request for proposals (RFP) No. W91B4K-10-R-0001, issued by the Department of the Army, for generators.

We deny the protest.

The RFP was issued for the provision of generators to the Fenty Forward Operating Base in Afghanistan. The solicitation provided for the award of a fixed-price contract to the offeror submitting the lowest priced, technically acceptable proposal. RFP at 3-11, 24. The RFP, which had a closing date and time of November 12, 2009, at 1 p.m. eastern standard time, provided that proposals could be submitted either electronically or in hard copy. *Id.* at 1, 21. The solicitation cautioned offerors that they were "responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation." *Id.* at 16. The RFP added, in relevant part, that "[a]ny 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 [will be] 'late' and will not be considered." *Id.* at 17.

The agency received 74 timely proposals and 10 late proposals in response to the solicitation. Agency Report (AR), Tab 2, Contracting Officer's Statement, at 1. According to its records, the agency did not receive a proposal from Latvian Connection.

Latvian Connection asserts that contrary to the agency's records, it timely submitted its proposal by e-mail on November 12 at 1:19 a.m. Protest at 4. In support of this assertion, the protester states that its "sent' e-mail folder confirms the transmission of [Latvian Connection's] proposal," and that it "continued to utilize (without incident) the same e-mail address in its post-proposal submission communications" with the agency. *Id.* The protest also includes the declaration of Latvian Connection's Chief Executive Officer (CEO), which states that he transmitted the proposal as an attachment to an e-mail "at '1:19 [a.m.],' on 'Thursday, November 12, 2009,'" and that his e-mail records do not "in any way suggest[] that the e-mail and attachments were rejected as undeliverable or otherwise not sent." Protest, exh. 6, Declaration, at 1. The protester asserts that the agency's actions in awarding the contract to any other offeror were unreasonable because, in the protester's view, "[t]he evidence of [Latvian Connection's] timely submission of its lower-priced proposal to the address specified in the RFP is clear, cumulative and undisputed." Protest at 6.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. Federal Acquisition Regulation § 15.208; Lakeshore Eng'g Servs., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. Although the protester has submitted certain evidence, including the declaration of its CEO, in support of its assertion that it timely sent its proposal to the agency, there is no evidence establishing that the proposal was actually received by the agency. In this regard, the agency states that in response to Latvian Connection's initial inquiries and protest, searches of the agency's e-mails were performed on five different occasions by four different individuals, including the contracting officer, the cognizant senior systems administrator, and the cognizant information management officer, and that these searches did not result in any finding of the protester's proposal. Contracting Officer's Statement at 2.

On the basis of the record here, we conclude that the protester has failed to satisfy its burden of showing that it timely delivered its proposal to the agency. Lakeshore Eng'g Servs., *supra*; International Garment Processors, B-299674 *et al.*, July 17, 2007, 2007 CPD ¶ 130 at 7. Accordingly, we have no basis on which to object to the agency's actions.

The protest is denied.

Lynn H. Gibson
Acting General Counsel