



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Andros Contracting, Inc.

File: B-403117

Date: September 16, 2010

Jeffrey S. Stockton for the protester.
Paul Petraborg, Esq., Department of Veterans Affairs, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

When filing a protest document with the Government Accountability Office (GAO) via e-mail, the document must be timely received at protests@gao.gov, the address specifically designated under GAO's Bid Protest Regulations for filing protest documents via e-mail. Filing is not accomplished by e-mailing the document to another address in GAO or by e-mailing a copy of the document to the GAO attorney handling the protest.

DECISION

Andros Contracting, Inc., of St. Petersburg, Florida, protests the award of a contract to WEB Contracting, of Paola, Kansas, by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA-255-10-RA-0001 for elevator replacement/renovation at the Harry S. Truman Medical Center, Columbia, Missouri.

We dismiss the protest.

BACKGROUND

The agency issued the RFP as a set-aside for service-disabled veteran-owned small business firms. The RFP provided that award would be made to the lowest-priced technically acceptable offeror. For the purpose of determining technical acceptability, the RFP established four evaluation factors: (1) past performance; (2) technical construction experience; (3) past performance and technical

construction experience of proposed elevator manufacturer, suppliers, installers, or related subcontractors; and (4) technical qualifications of proposed staffing.

In order for its proposal to be considered technically acceptable under factor 3, an offeror was required to demonstrate that its proposed elevator contractor had the technical qualifications and experience needed to meet the project requirements by providing evidence of certain qualifications, which were divided into two principal subparts (A and B). Under subpart B, the RFP provided that an elevator contractor's equipment would be approved where the company has "a permanent and satisfactory maintenance service branch, which shall render services within two hours of receipt of notification." RFP at 11. In this regard, offerors were required to "submit the names and addresses of [the contractor's] authorized branch or service department which will render service to this installation, together with certification that the quantity and quality of replacement parts stock on hand is sufficient to guarantee continued operation of the elevator installation." Id.

Both Andros and WEB submitted timely proposals in response to the RFP. After evaluating the proposals, the agency decided to proceed with award on the basis of initial offers without discussions.¹ The agency concluded that Andros' proposal was technically unacceptable because, among other things, Andros failed to submit any information specifically responsive to subfactor 3B.² The contract was awarded to WEB as the offeror with the lowest-priced technically acceptable proposal.

After learning of the agency's award decision, and receiving a debriefing, Andros filed an agency-level protest on April 15, which was denied by VA on June 7. Andros subsequently filed this protest with our Office.

¹ The RFP stated that the agency intended to make award without holding discussions. RFP at 7-8.

² The record also shows that the agency rated Andros' past performance (factor 1) as neither pass nor fail because Andros did not submit a record of performing relevant contracts as a prime contractor. Agency Report, Tab 8, Andros Technical Evaluation, at 1-2. The agency also concluded that Andros did not satisfy the technical experience requirement (factor 2) because Andros did not submit its own prior experience as a prime contractor on comparable projects but instead submitted the experience of its key employee and subcontractor. Andros challenges the agency's finding in this regard as well. We need not address this issue, however, given our determination that the agency properly found Andros' proposal unacceptable with respect to subfactor 3B.

DISCUSSION

Our Bid Protest Regulations provide, in relevant part, as follows:

A document is filed when it is received by GAO by 5:30 p.m., Eastern Time, on that day. Protests and other documents may be filed by hand delivery, mail, commercial carrier, facsimile transmission (202-512-9749), or e-mail (protests@gao.gov).

4 C.F.R. § 21.0(f) (2010).³

On the day its comments on the agency report were due,⁴ Andros attempted to file the comments by e-mail; however, Andros used an incorrect e-mail address, sending the comments to protests@gao.com, instead of the correct address (protests@gao.gov). As a result, the comments were not received at the correct address by the due date and time. Andros also e-mailed a copy of its comments to the individual e-mail address of the GAO attorney handling the case; that e-mail was received 1 minute before the filing deadline.

As expressly established under our Bid Protest Regulations, e-mail filing at our Office means timely filing at the e-mail address protests@gao.gov. Filing is not accomplished by e-mailing a protest document to any other address in GAO, or by e-mailing a copy of the document to the GAO attorney handling the protest. Therefore, where a protest document is e-mailed to GAO, and the document fails to timely arrive at protests@gao.gov, the document is not timely filed.

Accordingly, since Andros chose to file its comments on the agency report by e-mail but its comments were not received at the designated e-mail address by the deadline, Andros' comments were not timely filed. Under these circumstances, our Regulations provide that we will dismiss the protest. 4 C.F.R. § 21.3(i).

³ GAO amended this section of the Bid Protest Regulations in June 2008 to clarify how documents are to be filed since it had been our experience that bid protest documents were occasionally directed to GAO departments unrelated to our bid protest process. 73 Fed. Reg. 15,098, 15,099 (Mar. 21, 2008). This amendment added the language specifying protests@gao.gov as the address to be used when filing protest documents by e-mail.

⁴ Under our Regulations, comments on an agency report must be filed with our Office within 10 days after receiving the report, except where GAO has granted an extension or established a shorter period. See 4 C.F.R. § 21.3(i). In this case, the time for Andros to file its comments on the agency had not been extended or shortened by GAO.

In any event, the protest is without merit. Andros implicitly recognizes that it failed to address subfactor 3B in the section of its technical proposal addressing factor 3, stating that “the absence of information under subfactor 3B” was a “simple oversight.” Protest at 6. Andros maintains, however, that other sections of its proposal listed contracts completed by its key employee and subcontractor involving elevator projects for VA and other federal agencies, all of which included the same requirement as that which offerors were required to address under subfactor 3B. According to Andros, it “assumed . . . that inclusion of numerous prior elevator projects would satisfy [the subfactor 3B] requirement.” *Id.* at 3. Andros argues that since the required information was included in its proposal, “although in an ambiguous manner,” it was unreasonable for the agency to have found its proposal technically unacceptable. *Id.*

Since an agency’s evaluation is dependent on the information provided in a proposal, it is the offeror’s responsibility to submit an adequately written proposal for the agency to evaluate; in this regard, contracting agencies evaluating one section of a proposal are not obligated to go in search of additional information that the offeror has omitted or failed to adequately present. *Keystone Sealift Servs., Inc.*, B-401526.3, Apr. 13, 2010, 2010 CPD ¶ 95 at 4. In this case, the record shows that the section of Andros’ technical proposal addressing factor 3 did not in fact address the subfactor 3B informational requirements. The record further shows that Andros’ proposal did not reference any other section of its proposal as including this information, or in any way indicate that Andros was relying on the other contracts listed in other sections of its proposal to show that it is capable of meeting the requirements of subfactor 3B.⁵ Given that it was incumbent upon Andros to submit an adequately written proposal, one which unambiguously addressed the subfactor 3B requirements, the agency reasonably found Andros’ proposal technically unacceptable for failing to address the subfactor 3B requirements as contemplated by the RFP.

Andros asserts that, to the extent the agency had any concerns in this regard, the agency was required to raise them with Andros. This argument also is without merit. Given that the RFP required offerors to address the requirements of subfactor 3B for the purpose of determining technical acceptability, any attempt to cure Andros’ omission of the required information would have constituted discussions. As noted

⁵ In its comments on the agency report, Andros submitted copies of sections of certain of its prior government contracts which included a contract clause identical to the requirements of subfactor 3B. As Andros did not submit these documents with its proposal, they were not available for consideration by the agency during the evaluation.

above, the RFP advised that the agency intended to make an award on initial proposals, without discussions; the agency had no obligation to hold discussions simply because Andros failed to comply with the RFP instructions to provide information necessary to determine its technical acceptability. Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156.

The protest is dismissed.

Lynn H. Gibson
Acting General Counsel