



Decision

Matter of: Associated Fabricators & Constructors, Inc.

File: B-405872

Date: December 14, 2011

Greg Schrimsher for the protester.

William D. Robinson, Esq., Department of Justice, Federal Bureau of Prisons, for the agency.

Louis A. Chiarella, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected the protester's proposal as late is denied where the record confirms that the proposal was received by e-mail after the closing time for receipt of proposals, and the agency properly determined that no exception would permit evaluation of the late proposal.

DECISION

Associated Fabricators & Constructors, Inc. (AFC), of Rogersville, Alabama, protests the rejection of its proposal as late under request for proposals (RFP) No. IS-0025-11, issued by the Department of Justice, Federal Bureau of Prisons, Federal Prison Industries (FPI), for the installation of a heating, ventilation, and air conditioning system at the Federal Correctional Institution in Talladega, Alabama. AFC argues that the rejection of its proposal as untimely was improper.

We deny the protest.

The RFP, issued on September 1, 2011, established a closing date and time of September 23, at 2:00 pm local time.¹ RFP at 1. The solicitation further informed offerors that they were to submit their proposals either by electronic mail, hand delivery, or mailed delivery to the FPI contracting officer, located in Minersville,

¹ In two other locations, however, the solicitation specified that the date and time for receipt of proposals was September 23, at 2:00 pm eastern time. RFP at 2, 21.

Pennsylvania. Id. at 21. The RFP also included Federal Acquisition Regulation (FAR) clause § 52.212.1, Instructions to Offerors--Commercial Items, which in relevant part provides:

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [Standard Form] 1449, letterhead stationery, or as otherwise specified in the solicitation.

* * * * *

(f) Late submissions, modifications, revisions, and withdrawals of offers. (1) Offerors are 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.²

Id. at 12 (FAR clause § 52.212-1).

AFC first attempted to submit its proposal electronically to the designated FPI contracting official on September 23 at 1:58 pm central time (or 2:58 pm eastern time). Protest at 1. AFC subsequently learned that this email had not been successfully delivered. See Agency Report (AR), Tab 3, Email from AFC to FPI, Sept. 23, 2011 (4:00 pm). The contracting officer then received an email with AFC's proposal at 4:21 pm eastern time. Id., Tab 4, AFC Email to FPI, Sept. 23, 2011 (4:21 pm). FPI notified AFC on September 28 that its proposal had been received late and would not be considered further for award. Protest, attach. C, FPI Late Proposal Notification Letter, Sept. 28, 2011. AFC then filed this protest with our Office.

AFC does not dispute that the FPI official designated for receipt of proposals was located in the eastern time zone. Nor does AFC dispute that its proposal was first received by FPI after 2:00 pm eastern time on September 23. The protester nevertheless contends that its proposal was not late and should not have been rejected as untimely because it met the RFP requirements, as AFC understood them. In support of its position AFC argues that: (1) it first sent its proposal by 2:00 pm central time; and (2) it believed the closing time was 2:00 pm central time because contract performance was to occur in the central time zone. The protester also essentially maintains that the timeliness of its proposal should be measured by when

² The RFP also contained FAR clause 52.215-1, Instructions to Offerors--Competitive Acquisition, which has similar language regarding the submission of proposals. Id. at 18 (FAR clause 52.215-1).

AFC submitted its proposal, rather than when the designated contracting official received it. We disagree.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208(a) (offerors are responsible for submitting proposals so as to reach the designated government office by the specified time); PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 2; Integrated Support Sys. inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. Similarly, it is an offeror's responsibility, when transmitting its proposal electronically, to ensure the proposal's timely delivery by transmitting the proposal sufficiently in advance of the time set for receipt of proposals to allow for timely receipt by the agency. PMTech, Inc., *supra*. Proposals that are received in the designated government office after the exact time specified are "late," and generally may not be considered for award.³ While the rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the common deadline set for all competitors. Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3.

Here, the RFP established a closing date and time of 2:00 pm eastern time on September 23. The solicitation also informed prospective offerors in unambiguous terms that the controlling event was the agency's receipt--as opposed to an offeror's submission--of proposals by the due date and time. However, the record reflects that the FPI contracting officer did not receive AFC's proposal until 4:21 pm eastern time, well after both 2:00 pm eastern time and 2:00 pm central time. In sum, the fact that AFC believed that it had sent its proposal in advance of the designated closing time is not determinative of the proposal's timeliness.

Lastly, although AFC does not dispute that the RFP twice expressly stated that the time for receipt of proposals was 2:00 pm eastern time, AFC argues that the language on the Standard Form 1449 ("OFFER DUE DT/LOCAL TIME, 9/23/2011 2:00 PM") was ambiguous. Comments, Oct. 18, 2011, at 1-2. To the extent there was any ambiguity in the RFP regarding the closing time, we find that AFC was required to protest this apparent solicitation defect prior to the time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2011); see Sea Box, Inc., B-401523, B-401523.2,

³ In this regard, FAR § 52.212-1(f)(2)(i)(A) provides that a late proposal submitted via electronic means is late and will not be considered unless accepting the late offer would not unduly delay the acquisition, it was received before award is made, and it was received at the initial point of entry to the Government infrastructure not later than 5:00 pm one working day prior to the date specified for receipt of proposals. FAR § 52.212-1(f)(2)(i)(A); see Urban Title, LLC, Jan. 7, 2009, 2009 CPD ¶ 31 at 3; Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3. This exception does not apply here, as AFC's proposal was not submitted by 5:00 pm on September 22, the day prior to the established closing date.

Sept. 25, 2009, 2009 CPD ¶ 190 at 4 (conflict regarding solicitation closing date constituted a patent ambiguity that was readily apparent prior to the time set for receipt of submissions).

In sum, since AFC's electronically transmitted proposal was not received until 4:21 pm eastern time, after the time set for receipt of proposals, it is a late proposal. Further, since it was not received at the initial point of entry by 5:00 pm the day before proposals were due, the late proposal cannot be accepted. FAR § 52.212-1(f)(2)(i)(A); Sea Box, Inc., B-291056, supra, at 4.

The protest is denied.

Lynn H. Gibson
General Counsel