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Decision

Matter of: Blue Glacier Management Group, Inc.

File: B-412897

Date: June 30, 2016

Lori Ann Lange, Esq., and Mark R. Berry, Esq., Peckar & Abramson, PC, for the protester.

Scott M. McCaleb, Esq., Tracye Winfrey Howard, Esq., and Nina S. Rustgi, Esq., Wiley Rein LLP, for VariQ Corp., the intervenor.

William J. Erle, Esq., and Patricia S. Grady, Esq., Department of the Treasury, for the agency.

Katherine I. Riback, Esq., Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider vendor's quotation is denied where the quotation was not received at the specified location prior to the time set for receipt of quotations.

DECISION

Blue Glacier Management Group, Inc., of Arlington, Virginia, a small business, protests the decision of the Department of the Treasury, Office of the Comptroller of the Currency (OCC) not to consider its quotation under request for quotations (RFQ) No. CC16HQ0004, issued by the OCC for cybersecurity defense center services. Blue Glacier contends that it submitted a timely quotation that the agency improperly rejected.

We deny the protest.

BACKGROUND

The OCC issued the RFQ on October 7, 2015, as a small business set-aside, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under the General Services Administration's (GSA) Federal Supply Schedule (FSS) No. 70, information technology. RFQ, amend. No. 1, at 1.

The RFQ anticipated the issuance of a fixed-priced task order for a base year and four 1-year options. Id. Pursuant to the RFQ, the task order would be issued to the vendor whose quotation represented the best value to the agency. RFQ at 54.

The RFQ contained detailed instructions for the preparation and submission of quotations, as well as the evaluation criteria and basis for award. As relevant here, the amended solicitation required that quotations be submitted electronically to CDCServices@occ.treas.gov no later than 2:00 p.m. Eastern Standard Time (EST) on November 9. RFQ, amend. No. 1, at 12. The solicitation cautioned that “[q]uotations received after the submission date and time may not be considered for award.” RFQ at 42; RFQ, amend. No. 1, at 12. The solicitation also noted:

It is the responsibility of the Quoter to ensure that its complete quotation package has been received by the OCC prior to the delivery deadline. **Please note that the attachment size limit is 25MB per email. Emails with larger attachments may not reach the email inbox.**

RFQ at 43 (emphasis in the original).

In addition, the RFQ incorporated by reference the late submission provisions of FAR clause 52.212-1, which provides that “[o]fferors are responsible for submitting offers . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation.” RFQ at 40; FAR clause 52.212-1(f). The provision further provides as follows:

Any offer . . . received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

- (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
- (B) There is acceptable evidence to establish that 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

FAR Clause 52.212-1(f)(2)(i).

The solicitation also provided that vendors could submit questions to the agency at the same agency email address specified for receipt of proposals. RFQ at 41. Before quotations were due, Blue Glacier submitted a question to the agency at the specified agency email address, and asked that the agency confirm receipt of the email. Protest, exh. 18, Decl. of Blue Glacier Official (Mar. 24, 2016), at 1. Three days later, the agency confirmed receipt of Blue Glacier's email. Id.

At 10:55 a.m. EST on November 9, the day quotations were due, Blue Glacier transmitted its quotation via email to the OCC email address designated for receipt of quotations. Id. at 2. The protester states that this email included two attachments--the technical quotation and the price quotation--and that the total size of both attachments was below the 25MB limitation specified in the RFQ. Id. This email, however, did not reach the designated OCC email address, but apparently was quarantined in the agency's email filtering system due to suspected phishing. Contracting Officer Statement (COS) at 3; Agency Report (AR), Tab 4, Decl. of OCC's Deputy Chief Information Officer (Apr. 25, 2016), at 2-3.

The agency states that by 2:00 p.m. on November 9 it received timely quotations from five vendors, and the contract specialist replied via email to each of the vendors confirming receipt of the quotations. COS at 1; AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 2. The agency also states that it received one late quotation on that date from a vendor that submitted its quotation in two separate emails, at 2:11 p.m. and 2:13 p.m., respectively. Id. at 2.¹ The agency represents that it did not receive a quotation from Blue Glacier by the time quotations were due, nor did it receive a quarantined/spam notification regarding Blue Glacier's email. AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 4; COS at 3. Therefore, the contract specialist did not send Blue Glacier an email confirming receipt of a quotation.

On January 29, 2016, Blue Glacier contacted the agency to inquire about the status of the procurement. The contract specialist states that she did not respond to Blue Glacier's email inquiry because she did not recognize Blue Glacier as a vendor for this procurement. Protest, exh. 4, Email From Blue Glacier to Agency (Jan. 29,

¹ The vendor in question sent an email to the agency on November 9 at 1:12 p.m., which the contract specialist states that she never received. AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 2. The contract specialist states that she did not receive a quarantined/spam notification regarding this email. Id. at 2. The contract specialist did not pursue this matter with the OCC help desk since two other emails and attachments were later received from this vendor. Id. She pointed out that the two attachments in the vendor's two emails, received after quotations were due, were each approximately 20 MB in size, and surmised that "[i]f the . . . email . . . sent at 1:12 p.m. exceeded the size limit of 25 MB established in the RFQ, the email may not have been delivered to the CDC inbox." Id. at 3.

2016); AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 3. Blue Glacier did not contact the agency again until February 26. On that date, Blue Glacier called and left a voicemail message with the contract specialist inquiring about the status of the procurement. The contract specialist states that she returned Blue Glacier's call, and advised that a contract had not yet been awarded. Id. The contract specialist also states that she told Blue Glacier that she was surprised by Blue Glacier's interest in the procurement because it had not submitted a quotation. Id. The contract specialist explains that, in response, Blue Glacier stated that it had submitted a timely quotation on the November 9 due date. Id.

In response to Blue Glacier's representation that it submitted a quotation on November 9, the contract specialist states that she asked Blue Glacier to send her the email submission that it originally sent on November 9, containing the company's quotation. The contract specialist states that she did not receive the forwarded email sent by Blue Glacier, nor did she receive a quarantine message regarding this email. AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 3. As a test, Blue Glacier sent two subsequent emails to the contract specialist, without attachments, which were received by the agency. Id. at 4; Protest, exh. 6, Test Email from Blue Glacier to Agency (Feb. 26, 2016).

That same day, in response to Blue Glacier's inquiry, the contract specialist engaged the OCC's information technology (IT) helpdesk in an effort to track the email quotations that Blue Glacier purportedly had sent, on both November 9 and February 26. With regard to the February 26 email, the helpdesk found the email in the agency's email filtering system and released it to the contract specialist and contracting officer. AR, Tab 4, Decl. of OCC's Deputy Chief Information Officer (Apr. 25, 2016), at 2-3.² The helpdesk explained that the email had been retained in the filtering system because the email attachments triggered anti-phishing content filtering. Id.

With regard to the November 9 email, the agency's Deputy Chief Information Officer explains that the agency does not have an email log from November 9 because OCC's email hygiene log is retained only for 30 days. AR, Tab 4, Decl. of OCC's Deputy Chief Information Officer (Apr. 25, 2016), at 3. The Deputy Chief commenced an investigation, however, to determine why the contracting officer did not receive Blue Glacier's quotation on November 9. Id. at 1. As an initial matter, he explains that all external emails to OCC are routed through the Treasury Fiscal Services network. Id. He further explains this network indicated that, on November 9, at 1:55 p.m., an email from Blue Glacier was sent to the OCC, but that

² The contract specialist noted that Blue Glacier's February 26 email, which forwarded an email that it apparently sent on November 9, 2015, shows that Blue Glacier requested a confirmation of receipt by the agency. AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 4.

the email was never delivered to the CDCServices@occ.treas.gov mailbox. Id. He then explains that “[w]hile there is no log from [the] November 9, 2015 email transmission,” it “appears that Blue Glacier’s November 9, 2015 email quote with attachments triggered the OCC email filtering system, in particular content filtering anti-Phishing.” Id. at 3. The Deputy Chief bases this conclusion on the fact that Blue Glacier’s “February 26, 2016 re-transmission of the quote email with the same attachments triggered anti-phishing content filtering and caused email blocking,” and therefore concludes that “it is reasonable that the email in question was blocked on November 9, 2015, due to suspected phishing.” Id.

As mentioned above, OCC received timely quotations from five vendors. COS at 1. With regard to the quotation that Blue Glacier submitted to the agency on February 26, the agency decided not to consider it because the agency was in the final stages of evaluation and accepting the late quotation would have unduly delayed the acquisition. COS at 4; AR at 3. The agency determined that the timely submitted quotation of another offeror was the best value to the agency and made award to that firm. Id. This protest to our Office followed.

DISCUSSION

Blue Glacier asserts that its quotation was properly and timely submitted, and that the agency erred in not evaluating and considering its quotation. The protester maintains that the failure of Blue Glacier’s email quotation to arrive at the email address specified in the solicitation was due to problems with the agency’s email system. Blue Glacier also contends that the agency should consider its late quotation under the “government control” exception. Protest at 8; Comments at 5. For the reasons set forth below, we find no basis to sustain the protest.

It is the vendor’s responsibility, when transmitting its quotation electronically, to ensure the delivery of its quotation to the proper place at the proper time. Advanced Decisions Vectors, Inc., B-412307, Jan. 11, 2016, 2016 CPD ¶ 18 at 5. Quotations that are received in the designated government office after the exact time specified are “late,” and generally may not be considered for award. While this rule may seem harsh in some circumstances, it alleviates confusion, ensures equal treatment of all vendors, and prevents one vendor from obtaining a competitive advantage that may accrue where a vendor is permitted to submit a quotation later than the deadline set for the competition. C2G Ltd. Co., B-411131, May 12, 2015, 2015 CPD ¶ 157 at 4.

Here, we find that Blue Glacier has failed to establish that its quotation was submitted to and received by the agency at the email address specified in the solicitation prior to the due date for receipt of quotations. The RFQ unequivocally required that quotations be submitted to the email address specified in the RFQ. RFQ, amend. No. 1, at 12. The record is clear that the contract specialist did not receive Blue Glacier’s quotation on November 9. AR, Tab 3, Affidavit of Contract

Specialist (Apr. 25, 2016), at 4. It also reflects that the contract specialist did not receive a notification advising that any emails had been quarantined. Id. Blue Glacier does not argue, and the record contains no evidence showing, that the protester attempted to confirm receipt of its emailed quotation. Rather, the protester's efforts to establish that its quotation was timely received by the agency did not begin until more than three months after quotations were due. Id. at 3. As discussed above, by that point, however, the agency's search for information regarding the protester's November 9 email transmission did not yield any results because the agency's email hygiene log is only retained for 30 days. AR, Tab 4, Decl. of OCC's Deputy Chief Information Officer (Apr. 25, 2016), at 3. Accordingly, although the Treasury Fiscal Services network indicates that an email from Blue Glacier was sent to OCC's external server on November 9, where it appears that it may have been blocked by the OCC's email filtering system, the record does not clearly establish what Blue Glacier communication the agency's email filtering system blocked.

Thus, the primary evidence establishing that Blue Glacier properly submitted its quotation is the protester's copy of an email, with two attachments, purportedly sent to the contract specialist on November 9, that appears to be a quotation in response to the RFQ. This copy, however, does not demonstrate that a quotation from the protester was received by the agency in a manner consistent with the solicitation. See International Garment Processors, B-299674 et al., July 17, 2007, 2007 CPD ¶ 130 at 7 (finding reasonable agency's rejection of revised quotation where protester only demonstrated that quotation was transmitted, but not that it was actually timely received by the agency). Rather, as discussed above, the record reflects that the first time the contract specialist affirmatively received Blue Glacier's quotation was on February 26, following the protester's inquiry as to the status of the procurement. AR, Tab 3, Affidavit of Contract Specialist (Apr. 25, 2016), at 4. A submission on this date, however, clearly did not meet the solicitation's deadline.

Blue Glacier next argues, citing FAR clause 52.212-1(f)(2)(i)(B), that the agency should consider its quotation because, even if it did not arrive at the specified email address prior to the specified time, it was "under the Government's control" prior to the time set for receipt of quotations. The protester points out that it submitted its quotation more than three hours before the deadline specified in the solicitation, and contends that its quotation was in the government's control as soon as it entered the Treasury Fiscal Services network.

Our Office has held that in determining whether a quotation was "under the Government's control" prior to the time set for receipt of quotations, a vendor must have relinquished custody of the quotation to the government so as to preclude any possibility that the vendor could alter, revise or otherwise modify its quotation after other vendors' competing quotations have been submitted. See Johnson Controls Gov't Sys., LLC, B-411862.2, Nov. 24, 2015, 2015 CPD ¶ 357 at 4. Here, as discussed above, because Blue Glacier did not seek prompt confirmation of the

agency's receipt of its quotation, Blue Glacier's November 9 email was automatically deleted from the agency's system after 30 days. Accordingly, the agency has no way to confirm the contents of the Blue Glacier email that entered the Treasury Fiscal Services network on November 9; that is, it has no way to confirm that the November 9 email included a quotation identical to the quotation furnished by the protester on February 26. Whether the protester actually altered its quotation is not the issue; rather, the issue is whether, under the circumstances, there is any possibility that the protester could have altered its quotation. This requirement precludes any possibility that a vendor could alter, revise or otherwise modify its quotation after other vendors' competing quotations have been submitted. Id. at 4-5. Because Blue Glacier was not precluded from altering its quotation here, the government control exception is inapplicable in this instance.

We also note that in order for the agency to properly accept a late proposal pursuant to FAR clause 52.212-1(f)(2)(i), the quotation must be received before award, and its acceptance must be found to not unduly delay competition. Here, the record reflects that when the contracting officer received Blue Glacier's quotation at the end of February, she decided that, because OCC was in the final phase of decision-making with regard to its evaluation, and had adequate competition, it was not in the best interest of the agency to include Blue Glacier's quotation in the competition because it would unduly delay the competition. COS at 4. The protester does not challenge the agency's determination in this regard. Accordingly, because the contracting officer found that accepting the late quotation would unduly delay the acquisition, none of the late proposal exceptions specified under FAR clause 52.212-1(f)(2)(i) apply.

Finally, Blue Glacier argues that the late submission of its quotation arose due to a "systemic failure" of the agency's email system, and therefore, the agency should consider its quotation. Protest at 9; Comments at 6.

Our Office has recognized a limited exception to the rule that negligent loss of proposal/quotation information does not entitle the offeror/vendor to relief. This exception generally applies where the loss was not an isolated act of negligence, but rather arises out of a systematic failure in the agency's procedures that typically results in multiple or repetitive instances of lost information. Project Res., Inc., B-297968, Mar. 31, 2006, 2006 CPD ¶ 58 at 2. Here, the record reflects that, on November 9, five vendors successfully submitted timely quotations, and one vendor successfully submitted a late quotation, to the designated OCC email inbox. AR, Tab 3, Decl. of Contract Specialist (Apr. 25, 2016), at 2. Although the protester contends that the vendor with the late-submitted quotation submitted an earlier email that was also blocked by the agency's spam filter, this assertion is not supported by the record. COS at 3 (stating that the vendor's initial email transmission was never received by the agency, and that it was unclear why the vendor then decided to resubmit its quotation as two separate emails). Accordingly, even if, as the agency IT staff surmise, Blue Glacier's email quotation was blocked

by the agency's anti-phishing filter, we fail to find that this reflects systematic failure of the agency's email system; rather, it reflects the proper functioning of the system to block emails that are suspect.³ The record also reflects that the agency conducted an investigation of its email system and found that no issues exist with external email providers. AR, Tab 4, Affidavit of OCC's Deputy Chief Information Officer (Apr. 25, 2016), at 1-3.

The protest is denied.

Susan A. Poling
General Counsel

³ To the extent that the protester argues that the agency had an obligation to check its phishing filter for emails that may have been quarantined, we disagree. Rather, Blue Glacier should have timely contacted the agency after it submitted its quotation and failed to receive the requested confirmation of receipt from the agency. As stated above, it is an offeror's responsibility to ensure that an electronically submitted bid is received by--not just submitted to--an agency prior to the time set for closing. Advanced Decisions Vectors, Inc., supra.