



Decision

Matter of: Airrus Management Systems, LLC

File: B-416358

Date: August 9, 2018

David A. Rose, Esq., Rose Consulting, LLC, for the protester.
Rachel E. Woods, Esq., Department of the Army, for the agency.
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester’s proposal as late is denied where none of the protester’s attempted submissions were received prior to the closing date and time for receipt of initial proposals; and dismissed where protester’s allegation about an apparent ambiguity in the solicitation is untimely.

DECISION

Airrus Management Systems, LLC, of Saratoga Springs, Utah, protests the rejection of its proposal by the Department of the Army, U.S. Army Materiel Command, under request for proposals (RFP) No. W52P1J-18-R-3011 for roof repair services. Based on its four attempts to submit its proposal, the protester contends that the agency should have received and considered its proposal.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on March 1, 2018, as a woman-owned small business set-aside, contemplated the award of a fixed-price contract for roof repair services at Tooele Army Depot in Tooele, Utah. Agency Report (AR), Tab B, RFP, at 1.¹ The solicitation

¹ For the purposes of clarity, we refer to all of the agency’s filings as one “agency report” throughout this decision. The agency filed a request for dismissal on May 18, to which Airrus responded on May 23. GAO determined that dismissal was not appropriate and held a conference call with the parties during which the parties agreed to consider the

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required that proposals be submitted electronically to the contracting officer and the contract specialist, and provided their respective e-mail addresses. Id. at 4. An amendment issued on April 2 extended the closing date and time for submission of initial proposals to April 5 by 2:00 p.m., Central time.² AR, Tab D, Amend. 0002, at 2.

Airrus attempted to submit its proposal four times. On April 3, Airrus first attempted to submit its proposal by e-mail with a “zip” file³ attachment at 3:30 p.m., Mountain time (i.e., 4:30 p.m., Central time). Protest, Exh. 2, Original Submission, at 1. On April 5, approximately one hour before the closing time for receipt of proposals, Airrus contacted the contract specialist by e-mail, requesting confirmation that its proposal had been received. AR, Tab F-1, E-mail from Airrus to Contract Specialist, at 1. The contract specialist advised Airrus that the agency had not received a proposal from Airrus. AR, Tab F-2, E-mail from Contract Specialist to Airrus, at 1.

Next, Airrus states that it attempted to submit its proposal by e-mail with attachments uploaded to a third-party file transfer service, “Google Drive,” at 12:19 p.m., Mountain time (i.e., 1:19 p.m., Central time), and then by e-mail with attachments using another file transfer service, “We Transfer,” at 12:34 p.m., Mountain time (i.e., 1:34 p.m., Central time). Protest, Exh. 4, Google Drive Proposal Submission, at 1-2; Protest, Exh. 5, We Transfer Proposal Submission, at 1-3. Neither the contracting officer nor the contract specialist received these transmissions.

Finally, also on April 5, Airrus attempted to submit its proposal by e-mail with portable document format (PDF) file attachments beginning at 1:02 p.m., Mountain time (i.e., 2:02 p.m., Central time). This submission was received by the agency at 2:06 p.m., Central time. Protest, Exh. 6, PDF Final Submission, at 1; AR, Tab F-5, E-mail from Airrus with Proposal to Contract Specialist, at 1; AR, Tab K, Late Letter, at 1.

On May 1, the agency advised Airrus that its proposal was received on April 5 at 2:06 p.m., Central time, and therefore was late and would not be considered for award. Late Letter at 1. This protest followed.

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agency’s request for dismissal as fulfilling the agency report requirement. The agency then provided a contracting officer’s statement and other documents for the record on May 31, and the protester filed an additional response on June 4.

² The RFP and the agency’s filings use “Central time,” while the protester’s filings use “Mountain time” and “Central time.” For the purposes of clarity, we use “Central time” and provide conversions from “Mountain time” to “Central time” where necessary throughout this decision.

³ “Zip” refers to a file format used for data storage and compression. A zip file contains other files which have been compressed to reduce their size. A user can access the zip file to retrieve the individual compressed files contained within.

DISCUSSION

Airrus does not dispute the fact that when it made its final attempt to submit its proposal, as a pdf, the agency did not receive it until after the closing date and time for submission of initial proposals. Airrus nonetheless contends that, “taking consideration of the multiple submissions in various formats to the government, the files were more than likely well within government control well before the expiration of submissions was due.”⁴ Protest at 4. In this regard, Airrus argues that its proposal should be considered under Federal Acquisition Regulation (FAR) § 15.208(b)(1)(ii), claiming that an exception applies “if there is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government’s control prior to the time set for receipt of proposal[s.]”⁵ Protest at 3.

As a preliminary matter, we disagree with Airrus’s belief that FAR § 15.208(b)(1)(ii) applies to its situation. Rather, as we have addressed in previous decisions, the applicable exception for electronic submissions is FAR § 15.208(b)(1)(i), which 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 p.m. one working day prior to the date specified for receipt of proposals. FAR § 15.208(b)(1)(i); see Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3; see also Peers Health, B-413557.3, Mar. 16, 2017, 2017 CPD ¶ 93 at 3-4 (reiterating that “[i]f we allowed late electronically transmitted proposals to be considered for award under FAR [§ 15.208(b)(1)(ii)] . . . this would render FAR [§ 15.208(b)(1)(i)] a nullity because a proposal rejected under [the first exception] could be considered under [the second exception], a result we do not believe was intended”).

In this regard, the agency explains that Airrus’s first, second, and third attempts to submit its proposal were not “received” by the agency. After Airrus filed this protest, the contracting officer contacted the appropriate agency technicians and requested an investigation of the agency’s e-mail server records for any e-mails that reached the server on April 3 and April 5 from Airrus and its representatives. AR, Tab L, Declaration of Contracting Officer, at 3. According to a technician, the e-mails containing Airrus’s first, second, and third attempted submissions were “hard bounced,” i.e., rejected, by the agency’s e-mail servers due to exceeding the allowable attachment size and, thus, were not processed for “release,” i.e., delivery. AR, Tab N, Declaration of Customer Support Technician, at 1-2. The contracting officer and the contract specialist further

⁴ While Airrus has raised arguments that are in addition to, or variations of, those discussed herein, we have reviewed all of the facts and Airrus’s arguments and find no basis to sustain its protest.

⁵ We note that Airrus bases its argument on language that appears to have been quoted from FAR § 15.208(b)(1)(ii), but wrongly cites to FAR § 15.208(c). Protest at 3.

confirm that they did not receive the e-mails containing Airrus's first, second, and third attempted submissions in their e-mail inboxes. Declaration of Contracting Officer at 2; AR, Tab M, Declaration of Contract Specialist, at 1.

Because the record indicates that the e-mails containing Airrus's first, second, and third attempted submissions were rejected by the agency's servers and never received at the e-mail addresses designated for receipt of proposals, we agree that the proposal was never actually "received" and thus properly could not be considered. See, e.g., Federal Acquisition Servs. Team, LLC, B-410466, Dec. 31, 2014, 2015 CPD ¶ 20 at 3 (explaining that "[w]e have consistently declined to require an agency to consider a proposal where, as here, there is no evidence that the proposal was 'actually received.'"). Therefore, the exception under FAR § 15.208(b)(1)(i) is not met, and we deny Airrus's protest allegations with regard to its first, second, and third attempts to submit its proposal.

We also deny Airrus's protest allegations with regard to its final attempt to submit its proposal, which the record shows was received by the agency on April 5 at 2:06 p.m., Central time. Late Letter at 1. It is the offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208(a); 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. Proposals that are received in the designated government office after the exact time specified are "late," and generally may not be considered for award. FAR § 15.208(b). 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 deadline set for all competitors. Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3. Because Airrus's final attempt to submit its proposal was received by the agency after the closing date and time for submission of initial proposals, the proposal was late and cannot be accepted.

Finally, Airrus complains that "the solicitation is unclear as to what size and format is required for submissions" and "this ambiguity is what eventually [led] to the government's determination of Airrus'[s] proposal being late." Protest at 3-4. To the extent that there was any ambiguity in the solicitation, we find that, for its protest to be timely, Airrus was required to protest this apparent solicitation defect prior to the closing

date and time for submission of initial proposals. 4 C.F.R. § 21.2(a)(1); see, e.g., Sea Box, Inc., supra, at 4. We dismiss this protest allegation as untimely.⁶

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel

⁶ Further, we have previously found that, even where a “solicitation did not include a size limit for electronic submissions, nevertheless, it is an offeror’s responsibility to ensure that an electronically submitted proposal is received” by the agency prior to the closing date and time for submission of initial proposals. Washingtonian Coach Corp., B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4-5.