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Decision

Matter of: SigNet Technologies, Inc.

File: B-417435

Date: July 3, 2019

Ira E. Hoffman, Esq., Butzel Long, PC, for the protester.
David White, Esq., Department of the Navy, for the agency.
Christopher Alwood, Esq., and Edward Goldstein, 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 the protester's attempted submissions were not received prior to the time for receipt of initial proposals and none of the late proposal exceptions in Federal Acquisition Regulation provision 52.215-1(c)(3) are applicable.

DECISION

SigNet Technologies, Inc. (SigNet), of Beltsville, Maryland, protests the rejection of its proposal by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), under Request for Proposals (RFP) No. N65236-18-R-0222 for electronic security system (ESS) and emergency management system (EMS) services. Based on its multiple attempts to submit its proposal, SigNet contends that the Navy should have received and considered its proposal.

We deny the protest.

BACKGROUND

The RFP, issued February 11, 2019, contemplated the award of an indefinite-quantity indefinite-delivery contract with both cost-plus-fixed-fee and fixed-price contract line items for ESS/EMS services to be provided at shore installations worldwide. Agency Report (AR), Tab 3, RFP, at 1-11. The RFP required that proposals be submitted via the SPAWAR E-Commerce Central (SPAWAR E-CC) website and specified that submissions outside of SPAWAR E-CC would not be accepted. Id. at 196. After

multiple amendments, the deadline for submission of proposals was set for Mach 22, 2019 at 2:00 p.m. Eastern Daylight Time (EDT).¹ *Id.* at 1; Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4. The RFP included Federal Acquisition Regulation (FAR) provision 52.215-1², Instructions to Offerors--Competitive Acquisition (JAN 2017), which provides, in relevant part, that:

(i) Offerors are responsible for submitting proposals . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation. . . .

(ii) (A) Any proposal . . . 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--

(1) 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 proposals; or

(2) 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. . . .

* * * * *

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation . . . the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume.

FAR provision 52.215-1(c)(3); RFP at 182.

¹ Some documents in the record refer to Central Daylight Time instead of EDT because the SPAWAR servers which received proposals for this effort, were in the Central time zone. COS/MOL at 5. For consistency, we use EDT throughout the decision.

² At various points in the record the parties reference to or make arguments based on the exceptions to late submitted proposals found in FAR provision 52.215-1(c)(3) and FAR § 15.208 interchangeably. The language of the relevant exceptions in FAR provision 52.215-1(c)(3) and FAR § 15.208 contain no material differences. For consistency, we refer to the exceptions contained in FAR provision 52.215-1(c)(3).

The agency represents that on March 22, at 1:41 p.m. EDT, SigNet logged-in to the SPAWAR E-CC website. COS/MOL at 6. At 1:51 p.m. EDT (nine minutes before proposals were due), SigNet attempted to submit its proposal as a single compressed “zip”³ file through the SPAWAR E-CC website for the first time. Id. SigNet again tried to submit its proposal at 1:56 p.m. EDT and 1:59 p.m. EDT. Id. None of SigNet’s three attempts to submit its proposal through the SPAWAR E-CC website were successful. Id. SigNet then attempted to submit its proposal to the contract specialist responsible for the procurement via three e-mails, with each e-mail containing a “zip” file with part of its proposal attached. Id. at 6-7. These e-mails were received at the contract specialist’s e-mail address after the deadline for receipt of proposals. Id. at 7. However, because the Navy-Marine Corps Intranet does not allow “zip” file attachments to be sent via personal e-mails, the SigNet e-mails, as received by the contract specialist, did not include the proposal files. Id. The Navy notified SigNet by letter dated March 26, that its proposal would not be considered for award. AR Tab 2, Letter from Contracting Officer, Mar. 26, 2019. This protest followed.

DISCUSSION

SigNet argues that an error with the SPAWAR E-CC website prevented the protester from timely submitting its proposal. According to SigNet, this error constituted an “unanticipated event” under FAR provision 52.215-1(c)(3)(iv), which should have extended the due date for the submission of its proposal. Protest at 9. Alternatively, SigNet contends that its proposal should be considered under FAR provision 52.215-1(c)(3)(ii)(A)(2), which provides an exception to a late received proposal if “[t]here is acceptable evidence to establish that it was received at the Government’s installation designated for receipt of proposals and was under the Government’s control prior to the time set for receipt of offers.” Protest at 9, Comments at 8-9.

The Navy responds that none of the provisions identified by the protester apply. In this regard, the Navy argues that SigNet has not demonstrated its failure to submit its proposal via the SPAWAR E-CC website was due to a SPAWAR E-CC system error. COS/MOL at 7-13, 20-21. Additionally, the Navy argues that the other late proposal exceptions do not apply because the agency never in fact received SigNet’s proposal via SPAWAR E-CC or e-mail. COS/MOL at 13-18. We agree with the Navy, as explained below.⁴

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.

⁴ SigNet argues in its protest that the agency should have waived late submission of SigNet’s proposal under FAR provision 52.215-1(f)(3) as a minor informality. Protest at 9. The Navy provides a detailed response to this protest allegation. COS/MOL at 19. SigNet did not rebut or respond to the agency’s argument on this issue in its comments. Accordingly, SigNet fails to provide us with a basis to conclude that the

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It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. Tele-Consultants, Inc., B-414135, Feb. 27, 2017, 2017 CPD ¶ 132 at 5.

Moreover, the protester has the burden of showing that it timely delivered its proposal to the agency at the specified address. See Latvian Connection Trading & Constr., LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 2; Lakeshore Engineering Services, B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. An agency is not required to consider a proposal where there is no evidence that the proposal was "actually received." Tele-Consultants, Inc., supra.

SigNet concedes that the Navy did not receive its proposal through the SPAWAR E-CC website prior to the time set for the receipt of proposals. Protest at 9. Rather, SigNet contends that the failure to receive its proposal must have been the result of an error with the Navy's E-CC system. According to SigNet, there was "most likely" a system error because the SPAWAR E-CC website did not complete the upload of SigNet's proposal five minutes after its first attempted submission.⁵ Comments at 6. Beyond its own speculation, SigNet has not provided any support for its conclusion that the submission failure was due to a system error. To the contrary, the record reflects that 12 other firms were able to successfully submit timely proposals through the SPAWAR E-CC website, to include SigNet's own subcontractors. COS/MOL at 6. The only discernable failure in this case resides with SigNet, which first attempted to submit its proposal approximately nine minutes before it was due. COS/MOL at 6. 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. Phillips Healthcare Informatics, B.405382.2 et al., May 14 2012, 2012 CPD ¶ 220 at 6.⁶ Given the record,

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agency's position regarding waiver under FAR provision 52.215-1(f)(3) is unreasonable, and as a result, we dismiss this protest allegation as abandoned. See Tec-Masters, Inc., B-416235, July 12, 2018, 2018 CPD ¶ 241 at 6.

⁵ The protester claims there was a nine minute gap between when SigNet first attempted to submit its proposal and when it clicked the "[s]ubmit" link again. Comments at 5. The record demonstrates that there was in fact only a five minute gap. COS/MOL at 6.

⁶ SigNet also argues that naming its proposal file in accordance with the convention in RFP instruction L-TXT-16 resulted in a file name which the SPAWAR E-CC website would not accept. Protest at 8-9. SigNet abandoned this line of argument when it failed to rebut or respond to the agency's response in its comments. Even if it had not abandoned this line of argument, SigNet has not explained why a recommended naming convention in the RFP would prevent it from naming its proposal file something acceptable for submission to the SPAWAR E-CC website. See RFP at 196 (noting "it is recommended that proposal submission files be . . . entitled "PROPOSAL.ZIP").

we have no basis to conclude that a system error frustrated the protester's ability to submit its proposal.

Moreover, the exception at FAR provision 52.215-1(c)(3)(iv) provides that if such an unanticipated event had occurred, "the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume." SigNet, however, did not subsequently submit its proposal through the SPAWAR E-CC. COS/MOL at 6. SigNet also has not demonstrated that "normal Government processes," as they relate to the SPAWAR E-CC website, remain interrupted, which would be necessary to further extend the deadline for SigNet to timely submit its proposal. Accordingly, SigNet has not demonstrated that this exception provides a basis to sustain the protest.

Finally, SigNet mistakenly asserts that the late proposal exception found at FAR provision 52.215-1(c)(3)(ii)(A)(2) is applicable here. As noted above, this provision allows the government to consider a late proposal where there is evidence establishing 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. By its terms, the exception does not apply in this case because there is no evidence that SigNet's proposal was ever received at the government office designated in the solicitation or that it was under the government's control prior to the time set for receipt of proposals.

Moreover, as we have addressed in previous decisions, this exception does not apply to electronic submissions; rather, electronic submissions are governed by FAR provision 52.215-1(c)(3)(ii)(A)(1), which provides that an electronically submitted proposal must be 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. See Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3; see also Airrus Management Systems, LLC, B-416358, Aug. 9, 2018, 2018 CPD ¶ 275 at 3. SigNet does not allege that its proposal was received at the initial point of entry to the government infrastructure before 5:00 p.m. one working day prior to the receipt of proposals. See Protest at 5. In fact, to this date, there is no evidence that the agency has ever received a copy of SigNet's proposal. Accordingly, the exception to late submitted electronic proposals at FAR provision 52.215-1(c)(3)(ii)(A)(1) does not provide a basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel