



Decision

Matter of: Ace Electronics Defense Systems, LLC

File: B-420863

Date: September 2, 2022

Adam Bruski, Esq., Warner Norcross + Judd LLP, for the protester.
Andrea Maglasang-Miller, Esq., Department of the Navy, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider protester's proposal is denied where the record shows that the proposal was never received by the agency.

DECISION

Ace Electronics Defense Systems (Ace), a small business located in Aberdeen Proving Ground, Maryland, protests the award of an indefinite-delivery, indefinite-quantity contract in support of mission package consoles for Littoral Combat Ship platforms to Centrol Inc., a small business located in Anaheim, California. The contract was awarded by the Department of the Navy, Naval Surface Warfare Center, under request for proposals (RFP) No. N63394-20-R-0038. Ace protests the agency's refusal to consider its final proposal revision (FPR).

We deny the protest.

BACKGROUND

On December 3, 2020, the Navy issued the RFP for procurement and manufacturing of materiel, assembly of materiel, quality assurance, and delivery of materiel in support of mission package consoles for Littoral Combat Ship platforms. Agency Report (AR), Exh. 2, RFP, Statement of Work (SOW) at 85. The solicitation required that proposals be submitted electronically to the contracting officer and the contract specialist, and it provided their respective e-mail addresses. RFP § L, ¶ 7.7.3.

In January 2022, after the receipt of initial proposals, the Navy established a competitive range that included Ace's proposal. See AR, Exh. 1, Contracting Officer's Statement

(COS) at 1; AR, Exh. 4.1, Email from Agency to Protester, Jan. 21, 2022. On January 27, 2022, the Navy issued amendment 8, which closed discussions, required that final proposal revisions be submitted electronically to the contracting officer and the contract specialist, and provided their respective email addresses. AR, Exh. 2.2, amend. 8 at 1. FPRs were due no later than 10:00 a.m. Pacific Standard Time on February 11. *Id.*

The protester reports, and the agency does not dispute, that Ace attempted to submit its FPR on the morning of February 11. Protest at 1; Protest exh. B, Email from Protester to Agency, Feb. 11, 2022; COS at 2. According to the protester, it was not aware that the Navy had not received the February 11 email until June 29, 2022, when the agency informed Ace via email that the Navy did not receive an FPR from Ace. Protest at 1; see also AR, Exh. 4.5, Email from Agency to Protester, June 29, 2022.

The agency states that emails sent from a commercial email service to a “us.navy.mil” address are routed to the government’s Enterprise Email Security Gateway (EEMSG) for screening. AR, Exh. 5, Decl. of Network Eng’r ¶ 3. If an email complies with the EEMSG requirements, the email is then transmitted to a Navy email security gateway where it is screened against the Navy’s policies. *Id.* The agency email addresses relevant to this protest utilize the FlankSpeed server. AR, Exh. 6, Decl. of Forensic Analyst ¶ 4. The FlankSpeed server has a maximum file size limitation of 30MB for external emails, and emails that exceed that limit are blocked. *Id.* ¶ 5.

On July 7, 2022, Ace filed this protest with our Office. After receiving the protest, the agency conducted an investigation to determine whether the contracting officer and contract specialist received an email transmitting Ace’s FPR on February 11. COS at 2. The investigation found that the total size of Ace’s February 11 email was 31.58MB. AR, Exh. 5, Decl. of Network Eng’r ¶ 8; AR, Exh. 5.1, EEMSG log. The Navy determined that Ace’s February 11 email was received by the EEMSG, and when the EEMSG attempted to transmit the email to the contracting officer’s and contract specialist’s respective inboxes, the FlankSpeed server rejected the email because it exceeded the server’s file size limit. AR, Exh. 5, Decl. of Network Eng’r ¶ 8. The Navy concluded that the contracting officer and contract specialist did not receive Ace’s February 11 email. AR, Exh. 3, Decl. of Procuring Contracting Officer ¶ 5; AR, Exh. 4, AR, Exh. 6, Decl. of Contract Specialist ¶ 5; Decl. of Forensic Analyst ¶ 7.

DISCUSSION

Ace asserts that the agency was required to consider Ace’s proposal because it submitted all required information before the deadline for FPR submission. Protest at 2. Ace posits that because the February 11 email reached the EEMSG, Ace’s FPR was “received” by the Navy and was therefore delivered to “the Government office designated in the solicitation by the time specified in the solicitation.” Comments at 2-3 (*quoting* Federal Acquisition Regulation (FAR) provision 52.215-1(c)(3)(i)). The protester reasons that the question of whether the February 11 email reached the inboxes designated in the solicitation is irrelevant because an offeror cannot be held

“responsible for the inner workings of government communications.” *Id.* at 3. The Navy contends that because the contracting officer and contract specialist never received Ace’s FPR, the agency properly did not consider Ace for award. Memorandum of Law at 3-4.

As our Office has stated, it is an offeror’s responsibility to deliver its proposal to the proper place at the proper time, and the protester has the burden to show that it timely delivered its proposal to the agency at the specified address. *ManTech Advanced Sys. Int’l, Inc.*, B-414985, Oct. 20, 2017, 2017 CPD ¶ 324 at 3; *see also Blue Glacier Mgmt. Grp., Inc.*, B-412897, June 30, 2016, 2016 CPD ¶ 177 at 5; *Latvian Connection Trading & Constr., LLC*, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 2. An agency is not required to consider a proposal where there is no evidence that the proposal was actually received by the agency. *Tele-Consultants, Inc.*, B-414135, Feb. 27, 2017, 2017 CPD ¶ 132 at 5 (denying protest challenging rejection of protester’s proposal where the record confirmed the agency never received the proposal prior to the closing time for receipt); *see also 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.’”).

Based on the record presented, we conclude that Ace has not established that its email with the attached FPR was actually received by the agency at the email addresses specified in the solicitation. The agency’s EEMSG log reports that the protester’s February 11 email was “bounced by destination server” because “message size limit exceeded.” AR, Exh. 5.1, EEMSG Log at 1. The email from the protester’s information technology provider, which the protester submitted to establish timely proposal submission, states: “I just looked and I can’t seem to find that original sent email . . . It is possible that the external recipients could have not received it, but the issue could have been on their side as well.” Protest exh. D, Email from Systems/Network Eng’r to Ace at 1.

Contrary to the protester’s position, delivery to the EEMSG does not constitute delivery to the office designated in the solicitation. Where, as here, an emailed proposal never makes it to the agency server, nor the email addresses designated for receipt of proposals, the agency is not required to consider the proposal. *See Airrus Mgmt. Sys., LLC*, B-416358, August 9, 2018, 2018 CPD ¶ 275 at 3 (“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.”).

Additionally, an offeror is not excused from complying with the size limits for electronic submissions even where the limits are not disclosed in the solicitation. As our Office has stated, “[w]hile it is true that the solicitation did not include a size limit for electronic submissions . . . it is an offeror’s responsibility to ensure that an electronically submitted proposal is received by--not just submitted to--the appropriate agency email address

prior to the time set for closing.” *Washingtonian Coach Corp.*, B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 3-4. Because it was Ace's responsibility to deliver its proposal to the proper place at the proper time, we have no basis to find the Navy's actions in this regard unreasonable or otherwise contrary to procurement law or regulation. Accordingly, on this record, we find no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel