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Decision

Matter of: Correct Solutions, LLC

File: B-421533

Date: May 31, 2023

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DIGEST

Protest that agency improperly rejected protester's proposal as late is denied where the record shows that protester submitted its proposal to incorrect email addresses which did not reach the agency, and where protester sent a second copy to the correct email addresses after the closing time for receipt of proposals.

DECISION

Correct Solutions, LLC, of Ruston, Louisiana, protests the rejection of its proposal under request for proposals (RFP) No. 70CDCR23R00000005, issued by the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (USICE), for commercial communications services for detention and removal operations nationwide. Correct argues that its proposal was improperly rejected as late.

We deny the protest.

BACKGROUND

The RFP, issued January 30, 2023, sought proposals from small businesses to provide telephone and video services for use by noncitizens at 39 USICE primary facilities for a 2-year base period and four 2-year option periods. Agency Report (AR), Tab 2, RFP

at 2-11. The RFP was posted electronically on the sam.gov website.¹ The RFP provided for proposals to be submitted in two phases. *Id.* at 111-112. In phase 1, offerors were to submit a service level agreement chart, a contract transition plan/milestone schedule, and a plan for developing, testing, operating, and maintaining the communications network. *Id.* at 113; AR, Tab 11, Contracting Officer's Statement (COS) at 1. After evaluating phase 1 proposals and advising each offeror of the agency's "recommendation to proceed or not to proceed" in the procurement, offerors could submit a phase 2 proposal, which would consist of a technical demonstration/oral presentation and a business/pricing volume. RFP at 114.

Under the heading of proposal submission instructions, the RFP specified that each offeror "shall submit their Phase I proposal via email to the CS [contract specialist] with a courtesy copy to the CO [contracting officer]" by the closing time for receipt of proposals. *Id.* at 112. The RFP listed the name, telephone number, and an email address for the contracting officer and for the contract specialist. *Id.* at 111; *see also id.* at 2. As shown one page earlier (and on the RFP cover sheet, Standard Form 33), those email addresses were [firstname].[initial].[lastname]@ice.dhs.gov for the contracting officer, and [firstname].[lastname]@ice.dhs.gov for the contract specialist. *Id.* at 1-2, 111. On February 13, DHS issued amendment 1 "to update the RFQ and . . . due dates [to submit questions]," which specifically advised that the "RFQ due date changed" from March 13 to "3:00pm PST [pacific standard time] on February 28, 2023." AR, Tab 6, RFP, amend. 1 at 2.

On February 28, at around 1:40 p.m. PST, Correct emailed its phase 1 proposal to two email addresses: [firstname].[initial].[lastname]@dhs.gov (for the contracting officer) and [firstname].[lastname]3@dhs.gov (for the contract specialist). Protest exh. B, Transmittal Email from Correct Systems Administrator at 1; Protest at 2. At 3:41 p.m., Correct's Microsoft Outlook email system provided a status message that "[d]elivery to these recipients or groups is complete, but no delivery notification was sent by the destination server." Protest exh. D, Status Message at 1.

At around 7:25 p.m. PST, Correct sent its phase 1 proposal a second time by email with the explanation: "It has come to our attention that the proposal we submitted earlier today . . . may not have reached you." AR, Tab 8, Transmittal Email from Correct Vice President of Operations at 1. In the email, Correct also stated that the addresses in its original email were listed on the sam.gov website, but did not match the email addresses listed in the RFP. *Id.* The second email was sent to the two addresses Correct had used in the original email, plus two new addresses, which were the ones

¹ The SAM.gov website is the current governmentwide point of entry, which serves as "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public." Federal Acquisition Regulation (FAR) 2.101.

listed in the RFP: [firstname].[initial].[lastname]@ice.dhs.gov (for the contracting officer), and [firstname].[lastname]@ice.dhs.gov (for the contract specialist). *Id.*

On March 2, the contracting officer responded to Correct in a letter stating that the firm's proposal was rejected as late because the proposal was delivered to the email addresses specified in the RFP after the closing time of 3:00 p.m. PST. AR, Tab 10, Letter from Contracting Officer to Correct at 1. On March 10, Correct filed an agency-level protest challenging the rejection of its proposal.² On March 13, Correct filed this protest with our Office.

DISCUSSION

Correct argues that the rejection of its proposal as late was improper. The firm argues that it validly submitted its proposal to two email addresses listed on the sam.gov website posting of the RFP before the closing time, that Correct's email system confirmed that the email had been delivered, and that the contracting officer had admitted that the email addresses listed on sam.gov were "older" addresses that were configured to forward incoming email to the addressee's current inbox. Protest at 3. The protester contends that DHS received the firm's phase 1 proposal before the closing time, and that the difference in the email address used constituted a minor and immaterial deviation in the manner of submitting its proposal.³ *Id.* at 4.

In response, DHS argues that the only email transmitting Correct's phase 1 proposal arrived on February 28 at 7:26 p.m. PST, and was thus properly rejected as late. COS at 2-3. The contracting officer denies ever telling Correct that emails to the addresses listed in sam.gov would be received by the contracting officer or contract specialist. *Id.* at 3. The contracting officer further states that the agency's information technology office clarified that the two addresses listed in sam.gov "are not valid email addresses and an attempt to email [to] these addresses would not have reached the Agency's server." *Id.* Additionally, the contracting officer states that DHS's information

² DHS indicates that Correct's agency-level protest was dismissed as moot. AR, Tab 11, Contracting Officer's Statement at 4. Although Correct disputes the dismissal of its agency-level protest, see Comments at 3, our bid protest jurisdiction authorizes our review of whether an agency's procurement actions complied with procurement statutes and regulations, 31 U.S.C. §§ 3551-3552, so challenges to the procedural fairness of an agency's review of an agency-level protest are beyond our jurisdiction. *Eggs & Bacon, Inc.*, B-310066, Nov. 20, 2007, 2007 CPD ¶ 209 at 2 n.4.

³ Correct's protest cites provisions of FAR part 14, which specifies the procedures for sealed bidding. Protest at 3-4 (citing and quoting FAR 14.301, 14.302, and 14.405). There appears to be no dispute, however, that the procurement was actually a commercial item acquisition under FAR part 12, and that the solicitation was an RFP and used elements of FAR part 15. Even the agency's reference to the solicitation in amendment 1 as an RFQ does not undermine these facts.

technology group was asked to search the agency's email system for incoming email from Correct's systems administrator to the email inbox of either the contracting officer or the contract specialist between February 1 and March 31, but found none.⁴ *Id.* The agency contends that the record demonstrates that the only copy of the protester's proposal received by the contracting officer or the contract specialist arrived after the 3:00 p.m. PST closing time, and was properly rejected. Memorandum of Law at 5.

An offeror has the duty to deliver its proposal to the proper place by the time specified in the solicitation. Where that proposal is rejected as late for failing that duty, the protester bears the burden of showing that it timely delivered its proposal to the agency at the specified location. *Framaco-Bozdemir JV, LLC, B-420708.2 et al.*, Aug. 29, 2022, 2022 CPD ¶ 228 at 4.

Correct makes no claim that it emailed its proposal to either of the addresses specified in the RFP by the closing time. Rather, the protester contends that it should be sufficient that it emailed its proposal to the addresses listed in sam.gov as points of contact. Comments at 4. In Correct's view, the RFP only required that a proposal be sent by email to the contracting officer and contract specialist, without regard to the email addresses listed in the RFP, and Correct argues that it complied with the RFP even though it did not use the email addresses in the RFP. *Id.* According to Correct's "careful reading," the RFP only required offerors to use the email addresses in the RFP if they wished to submit questions about the RFP. *Id.* at 5. Correct reasons that the RFP allowed a proposal to be submitted to different email addresses, and contends that it was not "impermissible or unreasonable" to use the email addresses on sam.gov to submit its proposal, rather than the addresses in the RFP.⁵ *Id.* We disagree.

To resolve a dispute over the meaning of an RFP provision, we will read the RFP as a whole and in a manner giving effect to all of its provisions. *SRA Int'l, Inc.*, B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 7-8. Under the heading "L.4 PROPOSAL SUBMISSION INSTRUCTIONS," the RFP directed offerors to "submit their Phase I proposal via email to the CS [contract specialist] with a courtesy copy to the CO [contracting officer]." RFP at 112 (§ L.4.4). The interpretation of these words could leave no reasonably diligent offeror in doubt that it should use the email addresses for

⁴ The second email transmitting Correct's proposal after the closing time was sent by the firm's vice president for operations, so it was not a target of this search for the earlier email from the firm's systems administrator.

⁵ Correct's contention that the presence of two sets of email addresses (one set on sam.gov and one set in the RFP) was "at best utterly confusing, and at worst misleading," Comments at 5, appears to raise a patent ambiguity in the RFP. We do not address the merits of this contention because a challenge to a patent ambiguity in a solicitation must be raised before the closing time for proposals to be timely. 4 C.F.R. § 21.2(a)(1). Additionally, so far as the record discloses, Correct could have emailed its proposal to all four addresses.

those individuals that had appeared two subsections earlier, also within the proposal submission instructions, *id.* at 111 (§ L.4.2). By ignoring the RFP instructions, and instead using different email addresses obtained from sam.gov, Correct bore the risk that its emailed proposal would not be delivered timely.

DHS explains that Correct's email of around 1:40 p.m. PST did not reach either the contracting officer or the contract specialist because the email addresses Correct used were not valid. The agency's search of its systems for an email matching the characteristics of that message did not locate the email.⁶ COS at 3.

Correct has not shown that it delivered its phase I proposal by email to either of the email addresses specified in the RFP before the closing time. Indeed, the message generated by Correct's server expressly notes that the destination server did not provide delivery notification. The contemporaneous record shows that the only copy of Correct's proposal that the firm delivered to the contracting officer or contract specialist was sent at 7:26 p.m. PST, well after the 3:00 p.m. PST closing time, so the record supports DHS's rejection of Correct's proposal as late.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁶ Correct requested copies of DHS server activity logs during the 12-hour period surrounding the transmission of its email. Correct provided no basis to question the agency's veracity regarding its search and the conclusion that no email from Correct's sender arrived at the contracting officer or contract specialist inboxes, so we denied the protester's request.