



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Alalamiah Technology Group

File: B-402707.2

Date: June 29, 2010

Violy C. Pajarillo for the protester.

James N. Hewitt, Esq., Defense Logistics Agency, Defense Reutilization and Marketing Service, for the agency.

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DIGEST

Protest that agency improperly rejected the protester's proposal as late is denied where the record shows that the proposal was received by email after the closing time for receipt of proposals, and the agency properly determined that no exception would permit evaluation of the late proposal.

DECISION

Alalamiah Technology Group (ATG), of Kuwait City, Kuwait, protests the rejection of its proposal as late under request for proposals (RFP) No. SP4510-10-R-1004, issued by the Defense Logistics Agency (DLA), Defense Reutilization and Marketing Service (DRMS), for excess property management and office support services to be performed at Camp Arifjan, Kuwait. ATG argues that the rejection of its proposal was improper.

We deny the protest.

The RFP, issued on April 1, 2010, established a closing date and time of April 20 at "10 AM Sharp" local time. RFP at 1. The solicitation included Federal Acquisition Regulation (FAR) clause § 52.212.1, Instructions to Offerors--Commercial Items, which in relevant part provides:

- (b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. . . .

* * * * *

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. . . .¹

Id. at 44.

DRMS subsequently issued two amendments to the RFP. Amendment 0001 established a revised closing date of April 23, and stated that the “[t]ime to submit proposals remains unchanged 10:00 AM Sharp.” Amend. 0001 at 1. Similarly, amendment 0002 established a revised closing date of April 28, and stated that the “[t]ime to submit proposals remains unchanged 10:00 AM Sharp.” Amend. 0002 at 1.

ATG submitted its proposal electronically to the designated DRMS contracting official on April 28 in three separate volumes. ATG sent Volume I of its proposal at 9:52 a.m., Volume II at 9:57 a.m., and Volume III at 10:00 a.m. ATG Protest at 1. The designated agency contracting official received Volume I of ATG’s proposal on April 28 at 10:03 a.m., Volume II at 10:08 a.m., and Volume III at 10:11 a.m. DRMS notified ATG on May 20 that its proposal had been received late and would not be considered for award. Protest, attach. 6, DRMS Late Proposal Notification Letter. ATG then filed its protest with our Office.

ATG does not dispute that its proposal was received by DRMS after 10:00 a.m. local time on April 28. The protester nevertheless contends that its proposal was not late and should not have been rejected because ATG met the RFP requirements, as the offeror understood them, by electronically transmitting its proposal by 10:00 a.m. local time. In support of its position, ATG points to the language of the RFP amendments that stated the time to “submit”—which ATG interprets as “send”—proposals was 10:00 a.m. local time.² We disagree.

¹ Additionally, the email by which the agency distributed the RFP to prospective offerors, including ATG, stated that “bid proposal packages are due to the undersigned no later than 20 April 2010 on or before 10 AM. Any proposals received after 10 AM shall be rejected” ATG Protest, attach. 1, DLA Email to Offerors, Apr. 1, 2010.

² ATG also argues that the information provided by the agency to offerors during the course of the solicitation regarding the closing time for the submission of proposals was confusing and inconsistent. ATG Response to DRMS Dismissal Request, June 11, 2010, at 3.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208(a) (offerors are responsible for submitting proposals so as to reach the designated government office by the specified time); PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 3; Integrated Support Sys. inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. Similarly, we view it as 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. PMTech, Inc., *supra*, at 3-4. Proposals that are received in the designated government office after the exact time specified are "late," and generally may not be considered for award.³ While this rule may seem harsh in some circumstances, 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.

Here, the RFP provisions established that offerors' proposals were to be received by the designated agency contracting official by April 28 at 10:00 a.m. local time. The email by which DRMS distributed the RFP likewise informed prospective offerors that the defining event was the agency's receipt--rather than an offeror's submission--of proposals by the due date and time. Moreover, to the extent ATG is now alleging that the solicitation as amended was ambiguous about whether the established time was for the submission of proposals, as opposed to the receipt of proposals, ATG was required to protest this apparent solicitation defect prior to the next closing time for receipt of proposals following their incorporation. 4 C.F.R. § 21.2(a)(1) (2010); see Sea Box, Inc., B-401523, B-401523.2, Sept. 25, 2009, 2009 CPD ¶ 190 at 3-4 (conflict regarding solicitation closing date constituted a patent ambiguity that was readily apparent prior to the time set for receipt of submissions). Having failed to seek clarification or file a protest before the closing time of the RFP, ATG may not now assert that its understanding of the solicitation requirements regarding the submission of proposals is controlling. See id. at 4; Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8-9.

ATG also argues that the timing of the actual delivery of its proposal was beyond its control--that the 11-minute transmission times were due to Internet delays and the

³ In this regard, FAR § 52.212-1(f)(2)(i)(A) 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 § 52.212-1(f)(2)(i)(A); see Urban Title, LLC, Jan. 7, 2009, 2009 CPD ¶ 31 at 3; Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3. This exception does not apply here, as ATG's proposal was not submitted by 5:00 p.m. on April 27.

large files that made up each of its three emails. The protester notes that it is operating in Kuwait City where it has had emails take hours, if not almost all day, to arrive at their destinations. ATG Response to DRMS Dismissal Request, June 11, 2010, at 3.

In our view, the record shows that the primary cause of ATG's late delivery of its electronic proposal was that the offeror delayed attempting to transmit its proposal until shortly before the time set for the receipt of proposals; as noted above, two parts of its proposal were sent 8 minutes and 3 minutes before 10:00 a.m., respectively, and the third was sent at 10:00 a.m. An offeror's responsibility to deliver its proposal to the proper place at the proper time includes allowing a reasonable amount of time for the delivery of the proposal. PMTech, Inc., supra. Here, we conclude that ATG did not act reasonably in waiting to transmit its electronic proposal until minutes before the time set for receipt of proposals, especially when the offeror was apparently aware of the potentially long email delivery times common to its location. We think an offeror accepts the risk of late receipt and rejection of a proposal where it delays transmitting its proposal until the last few minutes before the time set for receipt of proposals. Id.

In sum, since ATG's electronically transmitted proposal was not received in full until 10:11 a.m. (after the time set for receipt of proposals), it is a late proposal; since it was not received at the initial point of entry by 5:00 p.m. the day before proposals were due, the late proposal cannot be accepted. See Sea Box, Inc., B-291056, supra.

The protest is denied.

Lynn H. Gibson
Acting General Counsel