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Comptroller General
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Decision

Matter of: Onsite OHS

File: B-406449

Date: May 30, 2012

John R. Tolle, Esq., and Bryan R. King, Esq., Barton, Baker, Thomas & Tolle, LLP, for the protester.

Gabriel D. Soll, Esq., H. Jack Shearer, Esq., Michael Ling, Esq., and Anh Nguyen, Esq., Department of Energy, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency improperly failed to consider its proposal is denied where the agency did not receive the proposal due to the protester's misuse of the FedConnect web portal specified as the method of submission for proposals under the solicitation.

DECISION

Onsite OHS, of Princeton, Indiana, protests the failure of the Department of Energy, National Nuclear Security Administration, to evaluate its proposal under request for proposals (RFP) No. DE-SOL-0003038, for operational emergency medical support and training services.

We deny the protest.

The agency issued the RFP on June 9, 2011, via FedConnect and Fedbizopps, and instructed offerors to submit their proposals "via FedConnect." RFP at 42, 58. FedConnect is a centralized web portal where vendors seeking to do business with the Federal Government can search for contract opportunities. Vendors can also submit solicitation responses directly through the FedConnect system. As explained in the FedConnect tutorial, and as relevant here, the FedConnect system has two distinct communication features: a "response center" for creating responses to solicitations, and a "message center," for asking questions related to a solicitation. According to the tutorial, when an offeror correctly submits a proposal

via the response center, the offeror will receive a confirmation page from the FedConnect system.

Five offerors submitted proposals via the FedConnect response center, however, Onsite's proposal was not among them. Of the five proposals in the FedConnect response center, four were received prior to the closing time of the RFP. FedConnect assigned these proposals confirmation numbers and forwarded them to the contracting officer for evaluation. Following evaluation, the contracting officer made the award on August 3. The next day, the contracting specialist sent post-award notifications to the five offerors who submitted proposals via the FedConnect response center.

On November 4, three months after the award, Onsite contacted the agency to ask whether its proposal had been evaluated or an award made, and was informed that an award had been made on August 3. Later that day, Onsite requested a debriefing, and informed the agency that it had submitted a proposal via FedConnect as instructed by the RFP. Onsite later sent a follow-up email to which it attached an image from the FedConnect system that purported to verify the submission of its proposal. However, the image submitted by Onsite was not a FedConnect confirmation page from the response center, but rather an image taken from the FedConnect message center. See Protest, Tab B.

Following Onsite's emails, the contracting specialist contacted FedConnect to determine if a technical problem may have prevented the receipt of Onsite's proposal. FedConnect's technical support personnel confirmed that there was no error. While Onsite sent several messages with attachments via FedConnect's message center, Onsite never submitted a proposal via the FedConnect response center. Consequently, Onsite never received a proposal confirmation page and Onsite's submission was not forwarded to the contracting officer with the other proposals submitted via the response center. After receiving this information, the agency provided Onsite with a voluntary debriefing on February 22, 2012, and explained that Onsite's "offer was not submitted properly through FedConnect and therefore was not evaluated." Debriefing Letter at 1. Onsite filed this protest on February 27.

In its protest, Onsite explains that it had not used FedConnect prior to this procurement and did not review the FedConnect Tutorial. Onsite states that upon registering and logging in to FedConnect, it was directed to the FedConnect message center, and was not aware that there was a separate response center for the submission of proposals. Onsite therefore submitted its proposal as an attachment to a message sent via the message center on June 24, 2011. Onsite then submitted a revised proposal in the same manner on June 28. Additionally, Onsite sent an email message to the contracting specialist stating that it had submitted a revised proposal and that "if you have any questions or need any additional clarification, please feel free to contact me." Email Message, June 28,

2011. The contracting specialist did not respond, and Onsite did not receive any indication that its proposal was not evaluated, or any notice of the award.¹

Onsite argues that its proposal was properly submitted in accordance with the terms of the RFP where it was submitted “through the FedConnect system.” Protest at 3. Onsite asserts that this is the case without regard to whether Onsite’s proposal was transmitted via the FedConnect message center versus the response center, because the solicitation did not specify or explain exactly how submission via FedConnect was to be achieved, or require offerors to review the FedConnect tutorial, and stated only that a proposal was an “electronic proposal submitted via FedConnect.” RFP at 58.²

However, it is undisputed in this case that the protester’s proposal did not reach the contracting officer. Thus, the protester’s use of the FedConnect message center for the submission of its proposal was ineffective. The only question is whether the agency was required to seek out and review proposals timely submitted via the FedConnect message center rather than the response center. The agency maintains that it was not, and argues that the fault for the failure of the protester’s proposal to reach the contracting officer rests squarely with the protester, because it is the responsibility of the offeror, not the agency, to ensure that the offeror’s proposal is received at the proper place at the proper time. The agency maintains that the only “proper place” to submit a proposal via the FedConnect system--to ensure that it is received by the contracting officer--is through the FedConnect response center, and that the protester’s failure to investigate the proper use of the FedConnect system was at its own peril. We agree.

¹ Onsite argues that the contracting specialist was required to review the messages in the FedConnect message center and Onsite’s email message, and should have responded to inform Onsite of its error. However, we have previously found that an agency has no duty to advise an offeror that its proposal was improperly submitted. Richcon Federal Contractors, Inc., B-403223, Aug. 12, 2010, 2010 CPD ¶ 192 at n.1

² Onsite also argues that the agency is attempting to enforce a matter of form over substance, where the solicitation only required that a proposal to be “submitted via FedConnect,” and that its use of the message center rather than the response center is at most a harmless minor informality that should have been waived. However, Onsite’s use of the message center rather than the response center was not simply a matter of form or a minor issue--it prevented the agency from actually receiving Onsite’s proposal. We see no flaw in the agency’s failure to waive the improper submission of the protester’s proposal where the agency had no knowledge of the proposal’s existence due to an error committed by the protester itself.

It is an offeror's responsibility to ensure that its proposal is delivered to the proper place at the proper time, and through the method authorized in the solicitation. See Richcon Federal Contractors, Inc., supra, at 2 (where facsimile transmission was not authorized by the solicitation, proposal delivered by facsimile was properly rejected and not considered); Sector One Security Solution, B-400728, Dec. 10, 2008, 2008 CPD ¶ 224 at 2-3 (protest of failure to evaluate proposal is denied where a mailed proposal directed to the hand delivery address rather than the mailing address was returned to sender and was therefore not received by the agency). Although Onsite argues that it did submit its proposal through the method authorized in the solicitation in this case, we disagree, and conclude that it is incumbent upon the offeror to understand and properly utilize the method of submission specified by the solicitation. Where the protester did not avail itself of the FedConnect tutorial, or otherwise educate itself on the functionality of the Fedconnect system, the protester bore the risk of improper use of the system, and of the failure of its proposal to reach the proper place of receipt at the proper time.

The protest is denied.

Lynn H. Gibson
General Counsel