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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: LATG, Inc.

File: B-409679.2

Date: July 31, 2014

Tony Romanos, LATG, Inc., for the protester.
Ronald J. Bald, Esq., United States Marine Corps, for the agency.
Gary R. Allen, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly declined to consider protester's final proposal revision where it was received by the agency after the time set for submission.

DECISION

LATG, Inc., of New Orleans, Louisiana, protests the rejection of its proposal under solicitation No. M67861-14-R-A002, issued by the United States Marine Corps for knowledge-based management support services in support of the Marine Forces Reserve. LATG contends that even though it was late in filing its proposal revisions (PRs), these revisions did not operate to modify its initial proposal, which the agency should have considered. Alternatively, LATG argues that its initial proposal was an "otherwise successful proposal" with more favorable terms, as defined by the Federal Acquisition Regulation (FAR), and should have been accepted even though it was late.

We deny the protest.

The solicitation was issued by the Marine Corps on November 29, 2013, seeking proposals to provide knowledge-based management support services under a fixed-price contract with travel costs calculated on a cost reimbursement basis, for a base year, with four one-year option periods, and one six-month option period. Solicitation at 54.

In response to the solicitation, the agency received nine proposals, including LATG's proposal. The contracting officer (CO) established a competitive range of four offerors, including LATG. Agency Report (AR), Tab J, Business Clearance

Memorandum, at 1. On March 21, 2014, the agency opened discussions via e-mail with offerors in the competitive range, including LATG. CO Statement at 1-2. This e-mail notification advised the competitive range offerors that PRs were due no later than 5:00 p.m. Central Daylight Time (CDT), March 27, 2014. AR, Tab K, E-mail from the Agency to LATG, March 21, 2014.

LATG submitted its PRs through two e-mails, which were received by the agency on March 27, 2014 at 5:07 p.m. and 5:11 p.m. CDT, respectively. CO Statement at 2. The CO determined that LATG's PRs modified LATG's initial proposal, were submitted late, and that none of the exceptions of FAR § 52.215-1 were applicable. AR, Tab O, CO Decision to Remove LATG from Consideration. Accordingly, the CO did not consider LATG's proposal for award. Id. After its agency protest was denied, LATG filed this protest with our Office.

LATG challenges the agency's rejection of its proposal. LATG does not dispute that it filed its PRs after 5:00 p.m. on March 27.¹ Rather, LATG argues that even if its PRs were late, the agency should have considered its initial proposal because the PRs were not mandatory, and the changes LATG made were merely "enhancements" and "explanations" not meant to change or replace LATG's initial proposal. Protest at 2; Comments at 1-2.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time and late delivery generally requires rejection of the proposal. FAR § 15.208; PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 2. Similarly, 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. Associated Fabricators & Constructors, Inc., B-405872, Dec. 14, 2011, 2011 CPD ¶ 279 at 3. Proposals that are received in the designated government office after the exact time specified are late, and generally may not be considered for award. U.S. Aerospace, Inc., B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 10. While the rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that

¹ LATG argues that the date and time for submission of PRs in the March 21 e-mail evidenced nothing more than a desired deadline. LATG contends that this is evidenced by the last sentence of the March 21 e-mail that stated that when the agency determined it had no more questions, it would close discussions. Comments at 1, citing AR, Tab K. LATG further cites an e-mail that officially closed discussions the morning after PRs were due. Comments, attachment. We fail to see how these facts change the specific date and time set for receipt of PRs. Furthermore, LATG's argument contradicts the language of the solicitation, which states that "[a]ny proposal modification or revision not received/submitted by the exact time specified for receipt of offers is 'late'." Solicitation at 142.

may accrue where an offeror is permitted to submit a proposal later than the common deadline set for all competitors. NCI Information Sys., Inc., B-405745, Dec. 14, 2011, 2011 CPD ¶ 280 at 5; U.S. Aerospace, Inc., *supra*; Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3.

With respect to the submission of PRs, the agency held discussions with LATG, and informed LATG that it could “alter” or “explain” “those aspects of [its] proposal identified” in discussions “to materially enhance” the “proposal’s potential for award.” AR, Tab K, Agency E-Mail to LATG, March 21, 2014. Our review of the record indicates that LATG’s PRs consisted of 45 pages, including a four percent reduction in price. AR, Tabs M and N, LATG’s PRs. On this record, we believe that the agency reasonably found that LATG’s submission of the PRs demonstrated LATG’s intent to modify its initial proposal, and thereby eliminated LATG’s initial proposal (without the revisions) from further consideration. *See Integrated Bus. Solutions, Inc.*, B-292239, July 9, 2003, 2003 CPD ¶ 122 at 4; Touchstone Textiles, Inc., B-272230.4, Sept. 5, 1996, 96-2 CPD ¶ 107 at 2.²

Alternatively, LATG asserts that its late PRs constituted late modifications of an otherwise successful proposal that make its terms more favorable to the government, and are therefore properly acceptable under FAR §§ 15.208-2(b)(2) and 52.215-1. Comments at 2. This assertion is equally without merit. It is well-settled that the term “otherwise successful proposal” restricts this exception to permit the government’s acceptance of a late modification offering more favorable terms only from the offeror already in line for the contract award. Environmental Tectonics Corp., B-225474, Feb. 17, 1987, 87-1 CPD ¶ 175 at 4; *see The Sandi Group, Inc.*, B-401218, June 5, 2009, 2009 CPD ¶ 123 at 3; Phyllis M. Chestang, B-298394.3, Nov. 20, 2006, 2006 CPD ¶ 176 at 5 n.3. Thus, an offeror cannot avail itself of the late proposal submission provision where the agency has not already identified an otherwise successful offeror. Global Analytic Info. Tech. Servs., Inc., B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 5-6.

Here, the record establishes that no award decision has been made. CO Statement at 2. Accordingly, the exception set forth in both FAR §§ 15.208-2(b)(2) and 52.215-1(c)(3)(ii) is inapplicable.

² LATG argues that the Integrated Bus. Solutions and Touchstone Textiles decisions are not applicable because LATG was not required to submit PRs, either due to a solicitation amendment or because of discussions. LATG misses one of the main points of these decisions: that the submission of a proposal revision generally demonstrates the offeror’s intent to modify or replace its initial proposal, thus extinguishing the agency’s right to accept the earlier offer. Integrated Bus. Solutions, Inc., *supra*; Touchstone Textiles, Inc., *supra*. As noted above, LATG’s PRs did, in fact, modify its initial proposal.

The protest is denied.

Susan A. Poling
General Counsel