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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Brian X. Scott

File: B-410195

Date: November 7, 2014

Brian X. Scott, for the protester.

Kelly E. Rogers, Esq., Kimberly Foxx, Esq., Gordon Ivins, Esq., Department of the Navy, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably rejected the protester's proposal as late where the record shows that the proposal was delivered to a centralized mail sorting facility and then routed to the contracting office specified in the solicitation after the time set for receipt of proposals. Receipt at the agency's mail facility does not constitute receipt at the designated contract facility specified in the solicitation.

DECISION

Brian X. Scott, of Colorado Springs, Colorado, protests the rejection of his proposal as late under request for proposals (RFP) No. N00033-14-R-5220, issued by the Department of the Navy, Military Sealift Command (MSC), for a series of voyages to perform resupply deliveries to islands off the coast of California.

The protest is denied.

The RFP was issued on June 20, 2014.¹ The solicitation advised that hand-delivered and mailed proposals were to be delivered to MSC offices at the Washington Navy Yard by 2:00 p.m. on July 30. RFP, amend. 5 at 97.² The

¹ The Navy advised that the independent government estimate for this requirement is [DELETED]. Contracting Officer (CO) Statement at 1.

² Page citations to documents in the agency report (AR) are to the Bates numbers provided by the MSC.

following language was included in the solicitation regarding deliveries to the Washington Navy Yard:

Access to the Navy Yard, where MSC is located, is restricted. Offerors, couriers, and other delivery services may encounter unpredictable and lengthy delays or denied access when attempting to enter that facility. Similarly, mailed and emailed proposals may encounter unpredictable and lengthy routing delays. In all cases, offerors are responsible for the risks associated with the chosen delivery method and for ensuring that the Government receives the complete proposal at the appropriate designated location prior to the due date and time for proposal submission.

RFP at 75.

MSC explains that all United States Postal Service (USPS) mail for the Department of Navy, National Capital Region, which includes the MSC, is delivered to Joint Base Anacostia-Bolling (JBAB). Declaration of Postal Supervisor at JBAB (Aug. 27, 2014) at 176. The agency notes that JBAB is the largest Navy consolidated mail depot in the world. Id. The agency states that the JBAB facility screens the mail for threats and then sorts the mail for delivery to the various installations in the greater Washington D.C. area. Id. The agency states that mail to the Washington Naval Yard leaves the JBAB facility at around 8:30 a.m. on a daily basis. CO Statement at 183. Once the mail reaches the Naval Yard, then the mail is delivered to each activity on the base. Id. The agency states that typically MSC's mail is delivered between 11:25-11:30 a.m. daily. Id. In the event that a package has not been screened or sorted prior to the delivery truck leaving, it is delivered with the next regular delivery. Id.

On July 25, Mr. Scott filed an agency-level protest in which he requested documents that he stated were essential to the preparation of his proposal. Contracting Officer Statement at 182. The agency provided Mr. Scott with the requested documents on July 28; Mr. Scott subsequently withdrew the agency-level protest. AR, Tab 3, Email from Mr. Scott to MSC (July 29, 2014), at 172. On that same day, Mr. Scott requested "a day or two" extension to prepare and mail his offer. AR, Tab 3, Email from Mr. Scott to MSC (July 28, 2014), at 173. The CO issued amendment No. 5 to the RFP, which extended the due date for proposals from July 29 to July 30. RFP, amend. 5 at 97. Upon receiving the extension, Mr. Scott sent an email to the CO in which he stated, "[t]he Navy has provided me with all I need to prepare a competitive proposal." AR, Tab 3, Email from Mr. Scott to MSC (July 28, 2014), at 172.

Mr. Scott's proposal was sent by USPS Priority Mail Express (1-day service) from Colorado Springs at 5:02 p.m. local time on July 29. CO Statement at 2. The CO states that MSC's mailroom at the Washington Navy Yard received Mr. Scott's

proposal on July 31, at 11:00 a.m. AR, Tab 2, Mailroom Log, at 109. When the CO received the package, he noted that affixed to it was a label which indicated that the package had been received by JBAB at 2:09 p.m. on July 30.³ Id. 107. Because the proposal was not received at the MSC mailroom by 2:00 p.m. on July 30, as required by the solicitation, the CO rejected Mr. Scott's proposal as late. The agency notified Mr. Scott of the rejection of his proposal by email on August 1. AR, Tab 3, Letter from MSC to Mr. Scott (Aug. 1, 2014), at 152-153. This protest to our Office followed.

Mr. Scott argues that his proposal was received at the JBAB mail facility before the time set for the receipt of proposals and that the proposal was therefore under the agency's control; for these reasons, the protester contends that its proposal should have been considered timely received by the agency. The protester also notes that the Navy maintained a chain of custody of his offer from its receipt at the JBAB facility to its receipt at the MSC facility. The protester further contends that the agency's failure to adequately warn offerors that internal Navy procedures could cause significantly greater delays to mailed offers constitutes misdirection on the part of the agency. Protester's Comments at 15. The protester states that the agency "sabotage[d]" mailed proposals in this regard.⁴ Id.

It is an offeror's responsibility to deliver its proposal to the place designated in the solicitation by the time specified, and late receipt generally requires rejection of the proposal. Federal Acquisition Regulation (FAR) § 15.208(a); O.S. Sys., Inc., B-292827, Nov. 17, 2003, 2003 CPD ¶ 211 at 3; Integrated Support Sys. Inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. As our Office has held, a proposal that was received late may be considered if the late receipt was caused by mishandling at the government installation. Russo & Sons, Inc., B-280948, Dec. 11, 1998, 98-2 CPD ¶ 141 at 3.

³ During the course of this protest, Mr. Scott provided a document showing that the package was actually received at JBAB at 12:10 p.m. on July 30. AR, Tab 3, Receipt Letter from USPS, at 111. For the reasons discussed below, we need not resolve whether the package was received at 12:10 p.m. or 2:09 p.m.

⁴ The protester also contends that the Navy unfairly permits a disparity in delivery methods for different carriers. In this regard, while deliveries via Overnight USPS Express Mail are routed through the JBAB facility, some hand-carried and overnight commercial courier-delivered packages, including those delivered by DHL, FedEx and UPS, are not routed through the JBAB facility and are instead delivered directly to the Navy. Protester's Comments at 4. To the extent the protester complains that the agency has differing procedures for deliveries, we note that the solicitation clearly advised prospective offerors that mailed packages could experience "unpredictable and lengthy routing delays." RFP at 75.

Even assuming Mr. Scott's proposal arrived at the JBAB facility prior to the solicitation's closing time, we find no basis to sustain the protest. Our Office has clearly held that receipt of a bid or proposal at a mailroom or other receiving area does not constitute receipt at the location specified in the RFP, provided the agency has established reasonable procedures to ensure that mailed bids or proposals are routed from the mailroom to the location designated in a solicitation for receipt. See CCSC, Inc., B-404802.3, July 18, 2011, 2011 CPD ¶ 187 at 6; General Power Eng'g Assocs., Inc., B-292170, May 28, 2003, 2003 CPD ¶ 109 at 3; Inland Marine Indus. Inc., B-233117, Feb. 16, 1989, 89-1 CPD ¶ 165 at 3; Fishermen's Boat Shop, Inc., B-223366, Oct. 3, 1986, 86-2 CPD ¶ 389.⁵ An offeror must allow sufficient time for the proposal to pass through any intermediate stops and reach the designated office on time. Systems for Bus., B-224409, Aug. 6, 1986, 86-2 CPD ¶ 164 at 3. On this record, we find no basis to conclude that the Navy improperly rejected Mr. Scott's proposal.

Mr. Scott also contends that the Navy's CO is responsible for this late filing because the CO did not quickly send the engineering drawings requested in Mr. Scott's July 25 agency-level protest. Protester's Comments at 17. Specifically, Mr. Scott argues that the CO sent the engineering drawings to at least three of his competitors by July 7, but did not provide him the drawings until July 28. Id.

In our view, the protester cannot shift responsibility for its late filing to the agency. The record shows that Mr. Scott filed his agency-level protest on July 25, and was provided documents three days later. In addition, the protester requested additional time to submit his proposal, and the agency granted the protester's request by issuing RFP amendment No. 5, which extended the proposal due date by one day. As also discussed above, the solicitation clearly advised offerors that there was the potential for "unpredictable and lengthy routing delays" in the delivery of mailed proposals to the agency. RFP at 75. To the extent that the protester believed that he did not have sufficient time in which to prepare his proposal after the issuance of

⁵ The agency cites our decision in Fisherman's, for the proposition that receipt by the agency "mail depot" does not constitute receipt by the CO. AR at 2. The protester contends that our decision in Fishermen's is not relevant here because the "concept of a mail depot, as they existed in 1986, probably doesn't apply to any mail facilities anymore." Protester's Comments at 11. The agency explains, however, that the JBAB facility was established by the Navy shortly after the anthrax threats of the early 2000s. Declaration of Postal Supervisor at JBAB (Aug. 27, 2014) at 176. In any event, as discussed above, our Office has held in numerous decisions that receipt of a bid or proposal at a mailroom or other receiving area does not constitute receipt at the location specified in the RFP.

amendment No. 5, he was required to protest the lack of time prior to the July 30 closing time. Bid Protest Regulations, 4 C.F.R. ¶ 21.5(a)(1) (2014).

The protest is denied.

Susan A. Poling
General Counsel