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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Team Systems International, LLC

File: B-410420

Date: December 19, 2014

Christopher P. Mott, Team Systems International, LLC, for the protester.

Dana P. Friedman, Esq., Department of the Army, Corps of Engineers, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's rejection of the protester's late proposal revision is denied where the lateness of the submission was not caused by the agency and the protester's initial proposal was not technically acceptable.

DECISION

Team Systems International, LLC (TSI), of Frederick, Maryland, protests the rejection of its proposal under request for proposals (RFP) No. W91236-14-R-0039, issued by the Department of the Army, Corps of Engineers for storm drain remediation and improvements at Arlington National Cemetery in Arlington, Virginia. The protester contends that the agency improperly rejected its late-submitted proposal.

We deny the protest.

BACKGROUND

The agency issued the solicitation on July 23, 2014, to establish multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for construction services to support storm water system rehabilitation, improvements, and related work at Arlington National Cemetery. RFP at 1, 3. The solicitation anticipated the award of three fixed-priced IDIQ contracts, for a one-year base period and four one-year options, to the offerors submitting the lowest-priced, technically acceptable proposals. RFP at 20; RFP amend. 1, at 2, 4. The solicitation established that technical acceptability would be based on the following three non-price evaluation factors: specialized experience, past performance, and management approach. RFP at 20.

The RFP advised that a proposal with a rating of unsatisfactory in any one non-price factor would not be eligible for award. Id. at 32.

The agency received TSI's initial proposal by the August 26 due date. AR, Tab 5, Competitive Range Determination, at 1. The agency evaluated TSI's offer in accordance with the solicitation and determined that its offer was unacceptable under all three of the RFP's non-price evaluation factors. Id. at 3. On September 4, the agency notified the protester of its intent to open discussions with the company, and provided TSI an evaluation notice that listed the deficiencies identified during the evaluation of its proposal. AR, Tab 6, Discussions Letter, at 1; Tab 6, Evaluation Notice, at 1-3. In this regard, the evaluation notice identified fifteen deficiencies in TSI's proposal, with at least one deficiency in each of the three non-price evaluation factors. AR, Tab 6, Evaluation Notice, at 1-3. On September 9, the agency requested revised technical and cost proposals from all offerors, and set a deadline of September 16 at 11:00 a.m. local time for receipt of the proposal revisions. AR, Tab 8, Request for Proposal Revisions, at 2.

On September 15, TSI contacted the agency to request a due date extension because of problems it encountered with the FedEx pickup of its proposal revision. AR, Tab 9, TSI Request for Extension (Sept. 15, 2014), at 1. In the interest of promoting competition, the agency extended the due date for proposal revisions to 12:00 p.m. local time on September 17. AR, Tab 12, Agency Mem. Deadline Extension, at 1; Tab 13, Agency Notice of Deadline Extension, at 1. The agency advised all offerors of the extension, and warned that the new September 17 deadline would not be extended. AR, Tab 13, Agency Notice of Deadline Extension, at 1.

TSI did not submit a proposal revision by the 12:00 p.m. deadline on September 17. Instead, at 12:46 p.m., TSI notified the agency that FedEx had lost the package containing its proposal revision. AR, Tab 17, TSI Email to Agency (Sept. 17, 2014 at 12:46 p.m.). Shortly thereafter, TSI requested an additional 24-hour extension to permit FedEx to deliver its proposal revision. AR, Tab 19, TSI Email Extension Request (Sept. 17, 2014 at 1:46 p.m.). The agency responded to TSI's extension request as follows:

[t]he Government has not received [TSI's] final revised proposal
In the absence of a revised proposal submission, the Government will proceed forward with the company's original submission. In the event that a TSI revised proposal is received, it will be marked as late and a determination made consistent with applicable law and regulations.

AR, Tab 20, Agency Response Email (Sept. 17, 2014 at 6:34 p.m.) at 2.

On September 18, the agency received TSI's revised proposal. AR, Tab 22, Agency Notification of Late FPR, at 1-2. That same day, the agency notified TSI

that, in accordance with Federal Acquisition Regulation (FAR) § 15.208, its revised proposal was submitted late and would not be considered by the agency. Id. at 1-2. The communication additionally advised that the agency reviewed FAR § 15.208(b) and concluded that the late proposal exceptions were inapplicable to TSI's submission. Id. at 2-3. As relevant here, FAR § 15.208 provides:

Submission, modification, revision, and withdrawal of proposals.

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

* * *

(b)(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

FAR § 15.208(a), (b)(2). Upon receipt of the agency's letter, TSI filed its protest with our Office on September 19.¹

DISCUSSION

TSI challenges the agency's rejection of its proposal revision. The protester contends that the agency was required to accept the revision because the changes it made to its proposal are covered by the authority found at FAR § 15.208(b)(2).² In this regard, TSI asserts that it submitted an otherwise successful offer, as demonstrated by the agency's decision to open negotiations with the company, and that the revisions it made to its proposal make its offer more favorable to the government.

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(a); PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 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 unless the exceptions outlined in FAR § 15.208(b) apply. U.S. Aerospace, Inc., B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 10-11; PM Tech, Inc., supra. While the rule may seem harsh, it

¹ After receiving notice of the GAO protest, the agency suspended the procurement and indicated that no source selection decision has been made.

² The protester acknowledges that the exceptions at FAR § 15.208(b)(1) are not applicable here.

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 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.

TSI maintains that under FAR § 15.208(b)(2), the agency was required to accept its late proposal submission because TSI submitted a late modification of an otherwise successful proposal that makes its terms more favorable to the Government. In this regard, the protester views its untimely proposal revisions as a modification to its “otherwise successful” initial proposal.

Based upon our review of the record, we conclude that the protester has not demonstrated that it submitted an otherwise successful proposal; thus, the exception to the late proposal rule, proffered by TSI, is not applicable here. In this regard, our Office has held that an otherwise successful proposal is one that would result in the award of the contract to the offeror regardless of the late modification. Seven Seas Eng'g & Land Surveying, B-294424.2, Nov. 19, 2004, 2004 CPD ¶ 236 at 4. As described above, the RFP terms made clear that only those offers that were rated acceptable under all three non-price evaluation factors could be eligible for award. RFP at 20, 32. TSI's initial offer was rated unacceptable under all three of the RFP's non-price evaluation factors. AR, Tab 5, Competitive Range Determination, at 3. In accordance with the terms of the solicitation, the agency could not have awarded TSI a contract; thus, the protester's initial proposal was not an otherwise successful proposal. Accordingly, the agency reasonably rejected TSI's revised proposal as late.

The protest is denied.

Susan A. Poling
General Counsel