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Decision

Matter of: Advanced Decisions Vectors, Inc.

File: B-412307

Date: January 11, 2016

Devon E. Hewitt, Esq., and Matthew C. Glover, Esq., Protorae Law PLLC, for the protester.

Paul B. Oman, Esq., Department of Homeland Security, for the agency.

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DIGEST

Protest challenging agency's decision not to consider vendor's quotation is denied where the quotation was not timely received by the agency in a manner consistent with the terms of the solicitation.

DECISION

Advanced Decisions Vectors, Inc. (ADV), a small, disadvantaged business located in Alexandria, Virginia, protests the Department of Homeland Security's (DHS) decision not to consider its quotation pursuant to request for quotations (RFQ) No. HSHQDC-15-00358, issued by DHS for interagency security compliance support services. ADV disputes DHS' determination that ADV failed to submit its quotation to the proper email address identified in the solicitation.

We deny the protest.

BACKGROUND

DHS issued the RFQ via the General Services Administration's (GSA) e-Buy system on August 24, 2015, under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under GSA Federal Supply Schedule (FSS) No. 874, mission oriented business integrated services (MOBIS).¹

¹ The e-Buy portal is designated in FAR subpart 8.4 as GSA's electronic RFQ system where ordering activities post requirements. FAR § 8.402(d).

RFQ at 1. The RFQ, issued as a competitive section 8(a) set-aside, anticipated the issuance of a primarily fixed-price task order for a base year and four 1-year option periods for analytical, statistical, consulting, and program management services to support DHS's Interagency Security Committee's outreach and compliance program.² Id. at 1, 10, 15. Pursuant to the RFQ, the task order would be issued to the vendor whose quotation represented the best value to the agency. RFQ Memorandum at 3.

The agency posted with the RFQ a memorandum that contained detailed instructions for the preparation and submission of quotations; the memorandum also identified the evaluation criteria and basis for award. Of relevance here, the memorandum required that quotations be submitted electronically directly to the DHS contract specialist--at her email address provided in the memorandum--no later than 10:00 a.m. Eastern Standard Time (EST), on September 8, 2015. Id. at 1. The memorandum further cautioned that "[q]uotations not received by the time and date specified and in the manner specified herein will be considered non-responsive and eliminated from further consideration." Id. The agency reiterated--for a third time--that "[t]o be considered timely, electronic copies of the quotation submission must be received at the specified email address no later than 10:00 AM EST on September 08, 2015. The Government will confirm receipt of your submission via email reply." Id. (underline removed). Notably, the RFQ did not instruct vendors to submit quotations via GSA's e-Buy portal.

In addition, the RFQ incorporated by reference the late submission provisions of FAR clause 52.212-1, which provides that "[o]fferors are responsible for submitting offers . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation." RFQ at 1; FAR clause 52.212-1(f). The provision further provides as follows:

Any offer . . . received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, 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 offers; or

² The solicitation also included cost-reimbursable line items for travel and other direct costs. RFQ at 1.

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers

FAR clause 52.212-1(f)(2)(i).

The agency reports that by 10:00 a.m. on September 8 it received quotations from seven vendors, and the contract specialist replied via email to each of the vendors confirming receipt of the quotations. Contracting Officer's (CO) Statement at 2; Agency Report (AR), Tabs C-18 -- C-24, Emails from Contract Specialist to Vendors Confirming Receipt, at 1. The agency maintains that it did not receive a quotation from ADV, and, therefore, the contract specialist did not send ADV an email confirming receipt of any quotation. Id. Following its evaluation of the seven quotations, on September 24, the agency issued the task order to Eagle Hill Consulting, LLC for \$8,408,770.96. Id. at 2-3.

On October 5, a representative from ADV contacted the agency to inquire as to the status of the vendor's quotation. The CO advised the ADV representative that the agency did not receive ADV's quotation and, as a result, it was not evaluated or considered for award. Id. at 3; AR, Tab B-7, Emails between ADV and DHS Office of Procurement Operations (OPO), at 3. This protest followed.

DISCUSSION

ADV asserts that its quotation was properly and timely submitted, and the agency erred in not evaluating and considering the quotation. In this regard, the protester represents that its quotation was emailed to the contract specialist at the email address identified in the RFQ five minutes prior to the 10:00 a.m. deadline. In support, ADV provided for the protest record a copy of the email it purportedly sent to the contract specialist. Protest at 2; exh. A, ADV Email to Contract Specialist, Sept. 8, 2015 (9:55 a.m.), at 1. In addition, the protester argues that its quotation should have been considered because it also was timely uploaded to the GSA e-Buy portal. As evidence of its e-Buy submission, ADV submitted for the record a copy of a text message and an email from the e-Buy system confirming that the quotation had been received. Protest at 2-3; exh. C, Text Message Confirmation, at 1; exh. D, Email Confirmation, at 1.

The agency maintains that it did not receive a quotation from ADV prior to the submission deadline, and, as a result, ADV's quotation was properly not considered during the procurement. As evidence, subsequent to ADV's protest, the contract specialist and several other DHS personnel associated with the procurement provided for the protest record all emails (sent and received) related to the

solicitation for the 24-hour period surrounding the RFQ's closing time.³ CO Statement at 4; see AR, Tab C-1 -- C-84, Emails of Sept. 8 and 9 Relating to RFQ. In addition, a DHS information technology (IT) team conducted a similar search for emails related to the procurement. CO Statement at 4. The agency points out that none of the emails identified and produced included correspondence from ADV; in this regard, the vendor's quotation purportedly sent to the contract specialist was not discovered during the email search.⁴ See id.; AR at 10.

The agency further explains that DHS relies on an "extensive" series of email security services that sit between the DHS headquarters email servers and the internet. Supp. AR at 1; AR, Tab F-1, Revised DHS Incident Response Manager Statement, at 2. Some of these security services--what DHS refers to as the Edge--include anti-virus, spam, and spyware interdiction that scrutinize "many millions of inbound messages daily" prior to the emails moving forward to the DHS email servers. Id. In this respect, the Edge prevents spam and other malicious emails from ever reaching the DHS email servers and purges these potentially contaminated emails. Id. The agency reports that an "exhaustive" search of the Edge spreadsheet logs revealed what the DHS IT team referred to as an "artifact" that showed the "tracking of an email" from ADV addressed to the contract specialist. Supp. AR at 1. That is, the logs showed that an email from ADV may have reached the Edge level of IT security on September 8; however, no email from ADV passed through the Edge firewall to the DHS email servers.⁵ AR, Tab F-1, Revised DHS Incident Response Manager Statement, at 3. Moreover, because DHS purges potentially malicious emails within a week, by the time ADV filed its protest and the IT team conducted its search, the Edge no longer included a copy of any actual email from ADV. Id. at 2.

DHS also explains that no one at the agency reports receiving any notification from the GSA e-Buy system alerting the agency of the submission of a quotation for this

³ Specifically, in addition to the contract specialist, DHS provided emails from/to the source selection authority, contracting officer, and technical evaluators. CO Statement at 4.

⁴ A DHS incident response manager--an agency IT official responsible for computer emergency response, forensics, and data acquisition--reported that "there were no relevant [DHS] service/system outages . . . during the time the submission was supposedly sent or during the subsequent data searches." AR, Tab E-1, DHS Incident Response Manager Statement, at 1. In addition, the agency's search encompassed the recipients' email "junk" folders, which also did not yield any relevant results. AR, Tab F-1, Revised DHS Incident Response Manager Statement, at 2.

⁵ The record does not include any explanation as to why ADV's email may have been blocked by the Edge security system.

procurement. In any event, the agency asserts more generally that to the extent ADV submitted its quotation directly to the e-Buy system, such submission was counter to the express language in the RFQ memorandum and, thus, the quotation was properly not considered. In sum, the agency maintains that it properly excluded ADV's quotation from consideration because the contract specialist did not receive the quotation and any submission through the e-Buy system was contrary to the terms of the solicitation.

As an initial matter, we agree with the agency that whether ADV timely uploaded its quotation to the GSA e-Buy portal--and it appears that the vendor did--is of no consequence here. In this regard, it is the responsibility of each vendor to deliver its quotation to the proper place at the proper time. See Zebra Techs. Int'l, LLC, B-296158, June 24, 2005, 2005 CPD ¶ 122 at 3. Here, the RFQ unequivocally required that quotations be submitted to the contract specialist at the email address identified in the RFQ memorandum. RFQ Memorandum at 1. Indeed, in three separate paragraphs the agency warned that quotations had to be submitted directly to the contract specialist by the deadline and that quotations not received "in the manner specified" in the memorandum would not be considered. Id. Significantly, the RFQ did not provide for alternate quotation submission procedures via the e-Buy portal. Simply put, contrary to the protester's suggestion otherwise, e-Buy was not the "Government installation designated for receipt of offers." See FAR clause 52.212-1(f)(2)(i)(B). Thus, that the protester apparently submitted its quotation directly to the e-Buy system imparted no obligation on the agency to consider the quotation given that the e-Buy portal was not the proper location for electronic submissions.⁶

Further, the contract specialist explained that while she relied on the e-Buy system to publish the RFQ, she did not otherwise interface with the system. Contract Specialist's Statement at 1. In this regard, she reports--and the record does not evidence otherwise--that she did not access the e-Buy system to check for quotations; quotations were "received, evaluated, and awarded" outside of e-Buy. Id. In fact, the record does not show that any agency personnel had knowledge that ADV's quotation was uploaded to e-Buy, accessed e-Buy to receive or review quotations, or ever received ADV's quotation via the e-Buy system. The contract specialist further maintains that the text message that ADV received from the e-Buy system that referenced the contract specialist's email address "did not result from any input from my actual email address." Id. On this record, we decline to accept

⁶ The confirmation of receipt email and telephonic text message that ADV received from the GSA e-Buy system do not demonstrate that the vendor properly submitted its quotation in accordance with the RFQ terms. Rather, the confirmation messages simply support ADV's assertion that it submitted its quotation via the e-Buy portal, which, as discussed above, was not the proper place for the electronic submission of quotations.

that the agency erred when it did not consider the protester's quotation that was uploaded to the e-Buy portal. Cf. AECOM Tech. Servs., Inc., B-411862, Nov. 12, 2015, 2015 CPD ¶ 353 at 5 (finding that where protester uploaded its proposal to the wrong electronic location, the agency nevertheless should have considered and evaluated the proposal where the agency knew that the proposal had been submitted to the wrong location, the agency received the proposal prior to the submission deadline, and there was no burden on the agency or harm in accepting the proposal).

Next, we address ADV's purported September 8 email to the contract specialist. Here, the record is clear that the contract specialist did not receive ADV's quotation on September 8.⁷ As discussed above, the agency's search for emails between the protester and certain DHS officials did not yield any results. While it appears that the Edge security service may have prevented an email from ADV from reaching the DHS email servers, the record does not clearly establish what ADV communication the Edge actually blocked; the spreadsheet logs do not include a copy of the correspondence to verify the submission of ADV's quotation.

Thus, the primary evidence establishing that ADV properly submitted its quotation is the protester's copy of an email purportedly sent to the contract specialist on September 8 with an attachment that appears to be a quotation in response to the RFQ.⁸ This copy, however, does not demonstrate that a quotation from the protester was received by the agency in a manner consistent with the solicitation. See International Garment Processors, B-299674 et al., July 17, 2007, 2007 CPD ¶ 130 at 7 (finding reasonable agency's rejection of revised quotation where protester only demonstrated that quotation was transmitted, but not that it was actually timely received by the agency). Indeed, the record reflects that the first time the contract specialist affirmatively received ADV's quotation was on October 5, following the protester's inquiry as to the status of the procurement. See AR, Tab B-8, Test Message from ADV to Contract Specialist, at 1. Under these circumstances, we find no basis to sustain the protest.⁹

⁷ The contract specialist received quotations from seven other vendors without issue. CO Statement at 2.

⁸ The record includes two different versions of the email allegedly sent to the contract specialist, one sent on September 8 at 9:55 a.m., and another sent apparently at 9:54 a.m. Compare Protest, exh. A, ADV Email to Contract Specialist, Sept. 8, 2015 (9:55 a.m.), at 1, with AR, Tab B-13, Quotation from Protester Counsel, at 1. The time discrepancy is unresolved.

⁹ Notably, the record reflects that ADV took no steps to ensure that its quotation was received by the agency. In this respect, the RFQ expressly advised that vendors would receive a reply email confirming that the quotation was received by DHS. See RFQ Memorandum at 1. Despite not receiving any communication from
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Lastly, to the extent that the protester contends that the agency should consider the quotation that it attached to its October 5 correspondence with the contract specialist, its contention is without merit. Where, as here, the RFQ contains a late submission provision that quotations must be received by a stated deadline to be considered, quotations cannot be considered if received after the deadline.¹⁰ See Turner Consulting Group, Inc., B-400421, Oct. 29, 2008, 2008 CPD ¶ 198 at 3 (finding agency's decision not to consider protester's late quotation proper where RFQ provided that quotations received after the exact time specified for receipt of quotations would not be considered); see also, e.g., Data Integrators, Inc., B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 2 (finding agency's consideration of late quotation improper where the solicitation incorporated a late quotation provision expressly providing that any quotation "received . . . after the exact time specified for receipt will not be considered"); M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 4 (sustaining protest where agency considered late quotation despite provision in RFQ--FAR clause 52.212-1(f)--that generally precluded agency's consideration of a late submission).

Here, we find no basis to recommend that the agency consider ADV's quotation. In this regard, the RFQ contained strict requirements for the submission of quotations, including a firm deadline for quotations to be considered. As discussed above, the first time the contract specialist was in receipt of ADV's quotation was on October 5, well after the submission deadline. Thus, because ADV's quotation was not

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DHS--ADV only received confirmation from e-Buy--ADV made no prompt effort to seek confirmation that the contract specialist actually received the vendor's quotation. Indeed, ADV's first inquiry to the contract specialist was its October 5 communication, which occurred nearly a month after the submission deadline and almost two weeks after the task order was issued. Incidentally, prior to this, ADV had not previously contacted the agency to discuss the procurement or otherwise expressed any interest in the procurement (e.g., ADV did not respond to DHS's request for information). See CO Statement at 1; Supp. AR at 2

¹⁰ FAR provisions in Parts 14 and 15, governing the late delivery of bids and proposals, generally do not apply to the late delivery of a quotation. In this respect, generally, late quotations may be considered up to the time of issuance of the order, because an RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 2. Rather, the government's purchase order represents an offer that the vendor may accept through performance or by a formal acceptance document. See M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3. However, where an RFQ contains a late submission provision, the agency's consideration of late quotations is limited. Id.

received prior to the RFQ's firm deadline, we see no legal basis to require the agency to consider the late quotation.¹¹ See Turner Consulting Group, Inc., supra.

In sum, the record shows that the agency never received ADV's quotation prior to the submission deadline, the vendor failed to seek timely confirmation from DHS with respect to its submission, and the first time the agency affirmatively received the quotation was nearly a month after the RFQ closed and almost two weeks after the task order was issued. Under these circumstances, we find reasonable the agency's decision not to consider ADV's quotation.¹²

The protest is denied.

Susan A. Poling
General Counsel

¹¹ Our Office has held that in limited circumstances agencies should consider any quotations received prior to source selection if no substantial activity has transpired in evaluating quotations and other vendors would not be prejudiced. See Piedmont Hoist & Crane, B-400563, Oct. 8, 2008, 2008 CPD ¶ 189 at 2, citing KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 11. Here, however, the record shows that the agency received ADV's quotation nearly two weeks after the task order was issued. Under these circumstances, we see no reason to recommend that the agency consider ADV's October 5 submission.

¹² We also note, for the record, that the relevant exceptions in the FAR late submission provision--incorporated by reference into the RFQ--do not provide relief for the protester here. In this respect, the agency did not receive ADV's quotation until October 5, after the task order was issued, and the agency maintains that consideration of the quotation at this juncture would "disrupt the procurement process." AR at 1; see FAR clause 52.212-1(f)(2).