

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: GGear
File: B-413216
Date: August 15, 2016

Anthony Arias, for the protester.
Michael D. McPeak, Esq., Defense Logistics Agency, for the agency.
Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal as late is denied where the late receipt of the proposal was not caused by the agency and the paramount cause for late delivery was the protester's failure to follow the delivery instructions in the solicitation.

DECISION

GGear, a small business of Jamaica, New York, protests the rejection of its proposal by the Department of Defense, Defense Logistics Agency (DLA), under request for proposals (RFP) No. SPE1C1-16-R-0033 for moisture wicking T-shirts. GGear argues that its proposal was improperly rejected as late for reasons primarily due to the agency's fault.

We deny the protest.

BACKGROUND

DLA issued the solicitation on April 21, 2016, seeking various sizes and colors of moisture wicking T-shirts. RFP at 9. The solicitation set forth instructions for offerors to follow when submitting proposals. Specifically, proposals could be mailed, or hand carried to DLA Troop Support as follows:

> Address and Deliver “hand carried” offers, including delivery by commercial carrier, to:
DLA Troop Support
Business Opportunities Office

Bldg. 36, 2nd Floor, Wing E
700 Robbins Avenue
Philadelphia, PA 19111-5092
Solicitation Number: SPE1C1-16-R-0033
Opening/Closing Date and Time: April 21, 2016 / May 24,
2016@3:00 PM, Philadelphia, PA time

Id. at 4. The solicitation further stated:

Notes: 1. All hand carried offers are to be delivered to the Business Opportunities Office between 8:00 a.m. and 5:00 p.m., Monday through Friday, except for legal federal holidays as set forth in 5 USC 6103. Offerors using a commercial carrier service must ensure that the carrier service ‘hand carries’ the package to the Business Opportunities Office specified above for hand carried offers prior to the scheduled opening/closing time....

2. Examples of ‘hand carried’ offers include: In-person delivery by contractor, Fed Ex, Airborne, UPS, DHL, Emery, other commercial carrier, USPS Express Mail, and USPS Certified Mail.

Id. at 4-5. The solicitation also incorporated by reference Federal Acquisition Regulation (FAR) clause 52.212-1, Instructions to Offerors--Commercial Items, which provides that late proposals generally will not be considered for award if they do not reach the designated government office by the time specified in the solicitation.¹ Id. at 40, 65. The agency issued one amendment to the solicitation, which reiterated that the closing date and time remained at “3:00 PM, Local Time, May 24, 2016.” RFP, Amend. 01, at 5.

On the day proposals were due, GGear placed a series of calls to the contracting officer and contract specialist beginning at 9:58 a.m.² Protest at 3-6; AR, Tab 10, GGear Phone Records, at 2-7; see also AR, Tab 12, Protester Response to Agency

¹ The solicitation incorporated by reference the February 2012 and October 2015 versions of this clause. RFP at 40, 65. For purposes of this protest, we note that the clauses state the same with respect to late delivery.

² Phone records submitted by the contractor show that 13 telephone calls were made to two different phone numbers with Philadelphia area codes on May 24, as follows: 9:58 a.m.; 9:59 a.m.; 10:49 a.m.; 11:18 a.m.; 11:19 a.m.; 12:07 p.m.; 1:55 p.m.; 1:55 p.m.; 3:08 p.m.; 3:09 p.m.; 3:25 p.m.; 3:27 p.m.; and 3:44 p.m. Protest at 3-6; AR, Tab 10, GGear Phone Records, at 2-8. The number of minutes for all of the calls is one minute, except for the call at 3:08 p.m., which lasted two minutes. AR, Tab 10, GGear Phone Records, at 2-8.

Motion to Dismiss, at 1-2; AR, Tab 18, GGear Statement, June 29, 2016, at 1. At 3:09 p.m. and 3:47 p.m., the contracting officer received voicemails from representatives of GGear regarding its attempts to hand deliver its proposal.³ Combined Contracting Officer Statement of Facts and Memorandum of Law (COSF/MOL) at 3; AR, Tab 3, Decl. of Contracting Officer, at 1. The contracting officer, who was working outside of the office that day, returned the call and advised GGear that any proposals received after 3:00 p.m. would be considered late. Id. At 3:27 p.m., GGear sent an email to the contracting officer and contract specialist and stated that it had been trying to get in contact with them all morning and that although it was after 3 p.m., they hoped something could be worked out as far as submitting their proposal. AR, Tab 6, GGear Email, May 24, 2016, at 1.

On May 26, the DLA Troop Support Business Opportunities Office received a FedEx package with GGear's proposal. AR, Tab 7, FedEx Shipping Record. FedEx tracking information indicates that the package was shipped on May 25. Id. On June 2, the agency formally notified GGear that its proposal was not received by the time specified in the RFP and would not be considered. Id., Tab 8, Agency Notice of Late Proposal, at 1. This protest ensued.

DISCUSSION

GGear argues that the unavailability of the contracting officer and contract specialist prior to the proposal deadline resulted in its inability to submit its proposal by the 3:00 p.m. deadline on May 24 because it was not given direction as to where to deliver the proposal. Protest at 1. GGear argues that although the length of the calls was only 1-2 minutes, it left at least eight voicemails with the contracting officer and contract specialist. AR, Tab 12, Protester Response to Agency Motion to Dismiss, at 2; AR, Tab 18, GGear Statement, June 29, 2016, at 1. GGear states that its courier arrived at DLA Troop Support at 2:15 p.m., and went to three different security checkpoints, but ultimately was unable to deliver its proposal because the security guards could not contact either the contracting officer or the contract specialist to provide an escort to deliver the proposal. Protester Comments at 1; AR, Tab 17, Letter from Protester's Courier, June 28, 2016, at 1-2; AR, Tab 18, GGear Statement, June 29, 2016, at 1.

DLA refutes GGear's claim that it left any voicemail or email messages with the contracting officer or specialist prior to the proposal deadline. COSF/MOL at 3-4. DLA states that all voicemails received through the phone system are saved and sent to the recipient's email inbox, and no voicemails were left by GGear prior to the

³ GGear also left two other voicemail messages with the contract specialist at 3:10 p.m. and 3:46 p.m. AR, Tab 5, Decl. of Contract Specialist, at 1.

3:00 p.m. deadline.⁴ COSF/MOL at 3 n.2. The agency additionally notes that GGear did not send an email requesting assistance to deliver its proposal until 3:27 p.m., at which point it had already missed the proposal deadline. COSF/MOL at 3-4; AR, Tab 3, Decl. of Contracting Officer, at 1-4; AR, Tab 5, Decl. of Contract Specialist, at 1-5.

DLA further states that, regardless, GGear failed to follow the RFP instructions for hand delivery of proposals. According to the agency, the visitor's office was opened and operating under normal business conditions on May 24. COSF/MOL at 5-6. Further, the Business Opportunities Office was open all day on May 24 during its normal business hours of 7:30 a.m. through 5:00 p.m., and had at least one employee working in the office until 5:30 p.m. *Id.* at 2-3; see also AR, Tab 15, Agency Response to GAO Questions, June 24, 2016, at 1. In accordance with its routine procedures, the Business Opportunities Office had personnel available to escort a courier to its office once contacted by the visitor's office. *Id.* Further, the contracting officer reviewed the visitor's office sign-in book and did not find GGear's courier's name on the log for May 24. COSF/MOL at 6; AR, Tab 3, Decl. of Contracting Officer, at 2.

DLA argues that since the Business Opportunities Office did not receive GGear's proposal until May 26, and the FedEx tracking information indicates that it was not even sent until May 25, after the proposal deadline, GGear's proposal is clearly late. COSF/MOL at 7. DLA argues that it was GGear's misdirection to the guards to contact the contracting officer and contract specialist that resulted in its inability to submit its proposal. *Id.* at 9-12. Finally, DLA states that several offerors were able to hand carry their proposals to the Business Opportunities Office before the solicitation deadline, including some that were delivered on May 24. *Id.* at 3.

It is an offeror's responsibility to deliver its proposal to the proper place by the proper time, and late delivery generally requires rejection of the proposal. FAR § 15.208; Shirlington Limousine & Transportation, Inc., B-299241.2, Mar. 30, 2007, 2007 CPD ¶ 68 at 3. An offer that arrives late may only be considered if it is shown that the paramount reason for late receipt was improper government action, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Sector One Security Solution, B-400728, Dec. 10, 2008, 2008 CPD ¶ 224 at 2-3. Even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not doing

⁴ DLA advises that all voicemails received through its phone system are saved and sent to the recipient's email inbox, and has provided evidence to demonstrate that GGear left only three voicemail messages and all three were left after the proposal deadline. COSF/MOL at 3-4; AR, Tab 3, Decl. of Contracting Officer, at 1-4; AR, Tab 5, Decl. of Contract Specialist, at 1-5.

all it could or should have done to fulfill its responsibility. B&S Transport, Inc., B-404648.3, Apr. 8, 2011, 2011 CPD ¶ 84 at 3.

Here, the solicitation incorporated by reference FAR § 52.212-1, Instructions to Offerors--Commercial Items, which states that offerors are responsible for submitting offers to reach the government office designated in the solicitation by the time specified in the solicitation. FAR § 52.212-1(f)(1). The solicitation stated that hand carried offers "are to be delivered to the Business Opportunities Office between 8:00 a.m. and 5:00 p.m." and that any carrier service must hand carry the package to the Business Opportunities Office prior to the scheduled opening/closing time. RFP at 4-5. GGear's courier contends that it arrived at DLA Troop Support at approximately 2:15 p.m., less than an hour before the proposal deadline. AR, Tab 17, Letter from Protester's Courier, June 28, 2016, at 1-2. Rather than ask for the Business Opportunities Office, the courier stated that she provided the names of the contracting officer and the contract specialist.⁵ Id. Further, GGear contends that it made multiple attempts to contact the contracting officer and contract specialist prior to the proposal deadline and there was no response. However, the solicitation did not state that offerors must contact the contracting officer or contract specialist, see RFP at 4-5, and in fact, neither work at the Business Opportunities Office and are generally not involved in the delivery process of proposals to that office. COSF/MOL at 3.

Based on the record, we do not find evidence of any improper agency action and conclude that the protester's actions in not following the solicitation instructions were the paramount cause for the late delivery. Since DLA did not receive the protester's proposal until May 26, two days beyond the proposal due date, GGear's proposal was late.

The protest is denied.

Susan A. Poling
General Counsel

⁵ The record includes two statements from the protester's courier. In both statements, the courier states that she provided the information of the contract specialist to the security guards at the various checkpoints at which the courier sought entry to the DLA Troop Support site. AR, Tab 17, Letter from Protester's Courier, June 28, 2016, at 1-2; Comments at 2.