



Decision

Matter of: Ghazanfar Neft Gas LTD

File: B-414636

Date: July 21, 2017

S. Ahmad Shaheer Razavie, for the protester.
Kathryn M. Kelley, Esq., Defense Logistics Agency, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency failed to consider a firm's e-mailed proposal is denied, where the protester cannot demonstrate that the agency received the e-mail containing the proposal.

DECISION

Ghazanfar Neft Gas LTD, of Mazar-e-Sharif, Afghanistan, protests the decision of the Defense Logistics Agency (DLA) not to consider its proposal under request for proposals (RFP) No. SPE600-17-R-0208, issued by DLA for diesel and unleaded automotive gasoline. Ghazanfar contends that it timely submitted its proposal and that the agency failed to respond to its request for clarification about the status of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on February 23, 2017, provided for the award of a fixed-price requirements contract for the supply and delivery of diesel products and unleaded automotive gasoline to the U.S. Embassy in Kabul, Afghanistan. Agency Report (AR), Tab 2, RFP, at 1, 11, 43. The RFP contemplated a 3-year period of performance. Id. at 11. Award was to be made on a lowest-price, technically acceptable basis. Id. at 83.

The RFP contained instructions for the submission of proposals and included Federal Acquisition Regulation (FAR) provision 52.212-1, Instructions to Offerors – Commercial Items, which stated 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.” Id. at 78. Additionally, the RFP encouraged offerors to verify receipt of e-mail offers by contacting the contracting officer prior to the solicitation closing time. Id. at 82.

The solicitation was amended to instruct offerors submitting proposals via e-mail to send the proposals to the contracting officer and contract specialist and included their respective e-mail addresses. AR, Tab 4, RFP amend. 1, at 2. The amendment also included the agency’s answers to questions posed by potential offerors. In response to one question, the agency stated that “under FAR 52.212-1, it is the Offeror[’]s responsibility to confirm that an offer has been received by the [] U.S. Government.” Id., attach. 1, Questions and Answers, Answer to Question 12. The RFP was amended again to extend the deadline for receipt of proposals to April 3, 2017. AR, Tab 3, RFP amend. 2, at 2.

DLA timely received 31 proposals at the contracting officer’s and contract specialist’s e-mail addresses. AR, Tab 5, Contracting Officer’s Decl., at 1. On April 8, after the closing time for receipt of proposals, Ghazanfar e-mailed both the contracting officer and the contract specialist, and stated in relevant part as follows:

We submitted a proposal for procurement of fuel to US Embassy sites in Afghanistan on 13 March 2017 but since then, we have not received any reply and feedback about the process or progress on our submitted proposal.

We would highly appreciate to have a briefing about the status of our proposal.

AR, Tab 8, Ghazanfar E-mail, Apr. 8, 2017. The e-mail included Ghazanfar’s March 13 email by which it attempted to submit its proposal. Id.

The contract specialist responded to Ghazanfar’s e-mail, asking if a confirmation receipt had been received and notifying Ghazanfar that its proposal had not been received. AR, Tab 9, Contract Specialist E-mail, Apr. 10, 2017. Ghazanfar asserts that it replied to the contract specialist’s e-mail and, as part of that e-mail, forwarded its proposal and requested a reply. Protest at 1 and attach., Ghazanfar E-mail, Apr. 10, 2017. On April 27, DLA posted a notice of the award to another offeror to the Federal Business Opportunities (FBO) web site. AR, Tab 10, FBO Notice.

After failing to receive a response to its April 10 e-mail and viewing the FBO notice of the contract award, Ghazanfar protested to our Office.

DISCUSSION

Ghazanfar contends that DLA failed to consider its timely-submitted proposal and that the agency failed to respond to its request as to the status of the proposal. Protest at 1. In support of its position, Ghazanfar provided copies of its March 13 and April 10

e-mails to the contracting officer and contract specialist. Id., attach., Ghazanfar E-mails. Ghazanfar also provided declarations from its deputy chief executive officer (CEO) and information technology (IT) officer, as well as a screenshot demonstrating that the e-mail transmitting the proposal had been sent to the appropriate DLA officials. Comments, attachs., Deputy CEO Decl. and IT Officer Decl.

DLA states that it did not receive Ghazanfar's proposal or its April 10 e-mail retransmitting the proposal. Memorandum of Law (MOL) at 5. The agency states that it searched the e-mail inboxes and junk e-mail folders of the contracting officer and the contract specialist and found no e-mails from Ghazanfar for the dates the protester asserts that it sent e-mails. AR, Tab 5, Contracting Officer Decl., at 1-2; Tab 6, Contract Specialist Decl., at 1. The agency also states that its IT specialist searched the mailboxes as well as the correlating message tracing logs,¹ but found no evidence of e-mails from Ghazanfar for the relevant dates.² AR, Tab 7, DLA IT Specialist Decl. at 1.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208; DJW Consulting, LLC, B-408846.3, Dec. 18, 2013, 2014 CPD ¶ 77 at 3. The protester has the burden of showing that it timely delivered its proposal to the agency. Latvian Connection Trading & Constr., LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 3.

The record shows that Ghazanfar has failed to establish that its proposal was actually delivered to and therefore received by DLA. Although the protester has provided evidence that it sent its proposal to the agency in a timely manner and that a copy of the March 13 transmittal e-mail was received internally at Ghazanfar, this evidence does not demonstrate that DLA in fact received the proposal.

The agency states that it has conducted a search of the contracting officer's and contract specialist's e-mail inboxes and junk mail boxes, as well as a search of its message tracing logs, but has found no evidence of the e-mails in question. See MOL at 5; AR, Tab 7, DLA IT Specialist, at 1. Although neither Ghazanfar nor DLA have been able to explain what happened to the e-mails containing Ghazanfar's proposal, on the basis of the record here, we conclude that the protester has failed to satisfy its

¹ Message tracing logs are detailed records of all activity as e-mail flows through DLA's e-mail transport pipeline. AR, Tab 7, DLA IT Specialist Decl. at 1.

² The agency states that, due to the timing of the request for the e-mail search, some of the message log data was no longer available. AR, Tab 7, DLA IT Specialist Decl. at 1.

burden of showing that it timely delivered its proposal to the agency. Latvian Connection Trading & Constr., LLC, supra.

The protest is denied.

Susan A. Poling
General Counsel