



Decision

Matter of: GSI Construction Corporation, Inc.

File: B-418967

Date: October 28, 2020

Joshua Owens for the protester.
Colonel Patricia S. Wiegman-Lenz, Major Laura B. Bauza, Michael J. Farr, Esq., and Stephen Edward See, Esq., Department of the Air Force, for the agency.
Raymond Richards, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably failed to consider protester's proposal is denied where the protester did not to submit its proposal in accordance with the solicitation's instructions.

DECISION

GSI Construction Corporation, Inc. (GSI), a service-disabled veteran-owned small business (SDVOSB) of Pace, Florida, protests the decision of the Department of the Air Force to exclude its proposal from award consideration under request for proposals (RFP) No. FA441720R0004 for construction services at Hurlburt Field, Florida. GSI argues that it submitted a timely proposal and the Air Force acted unreasonably by failing to consider it.

We deny the protest.

BACKGROUND

On June 18, 2020, the Air Force issued the RFP as an SDVOSB set-aside using the procedures of Federal Acquisition Regulation (FAR) part 15, seeking proposals for construction services to enclose three open-air structural bays in an existing maintenance and watercraft storage building for the U.S. Special Operations Forces, Special Tactics and Training Squadron, at Hurlburt Field, Florida. Agency Report (AR), Tab 4, RFP at 1, 5. The RFP contemplated award to the offeror whose proposal represented the best value to the government. RFP at 61-62. Proposals were due by 2:00 p.m. local time on July 21. *Id.* at 1.

The RFP provided that the agency would only accept electronic proposals, and that proposals be submitted in one of three ways. *Id.* at 47. As relevant here, the RFP stated:

Contractors may submit proposals electronically to the Government via the DoD SAFE [Department of Defense secure access file exchange (DOD SAFE)] site (<https://safe.apps.mil/>). If submitting via DoD SAFE site, the offeror shall send an email requesting an “Electronic Drop Authorization” to personnel listed below no later than (NLT) 48 hours prior to the proposal due date/time. All documents submitted must be saved in .pdf format, and shall follow the instructions in [the solicitation]. . . . Submission of proposals through DoD SAFE site shall be addressed to the following:

[Contracting Officer], Email: [contracting officer]@us.af.mil
[Contract Specialist], Email: [contract specialist]@us.af.mil

Id. In addition, offerors could submit their proposals by hand-carrying disks containing the proposal in electronic format or mailing the disks to Hurlburt Field, Florida. *Id.*

The Air Force received six requests for electronic drop authorizations to submit proposals via DOD SAFE, including a request from GSI. AR, Tab 5, Drop Link Requests at 1-7; AR, Tab 6, GSI Drop Link Request. The agency sent an electronic drop authorization link to GSI on July 16. AR, Tab 7, GSI Drop Link. On July 21, the contract specialist requested confirmation that the link was received, and later that day, GSI confirmed receipt of the DOD SAFE electronic drop authorization link. AR, Tab 8, Confirmation Request; AR, Tab 9, GSI Confirmation at 1.

When files are placed in DOD SAFE, the recipient is notified via an automated message stating the name and email address of the individual that has “dropped off” the files. See AR, Tab 10, DOD SAFE Notifications. The Air Force received four notifications via DOD SAFE that files had been dropped off by the due date and time for proposal submission. AR, Tab 1, Contracting Officer’s Statement (COS) at 4; AR, Tab 10, DOD SAFE Notifications at 1-10. Neither the contracting officer nor contract specialist received an automated message notification that GSI dropped off a proposal or documents to DOD SAFE. COS at 4; see AR, Tab 10, DOD SAFE Notifications. Instead, on July 21, at 1:59 p.m.--one minute before the time set for receipt of proposals--GSI emailed the contracting officer and contract specialist and stated: “We have just uploaded our proposal package to [DOD SAFE]. I am attaching [it] here as well to [e]nsure your receipt.” AR, Tab 11, Email from GSI to Agency, July 21, 2020 (1:59 p.m.).

On July 22, the contract specialist emailed GSI and explained that the agency had not received an email notification from DOD SAFE regarding a proposal submission from GSI. AR, Tab 12, Email from Agency to GSI, July 22, 2020 (11:05 a.m.). The contract specialist asked GSI to send the agency a copy of the company’s email confirmation or a snapshot of the proposal upload to DOD SAFE. *Id.* GSI responded to the contract

specialist's email later that day, saying: "[w]e did not receive a confirmation email. After uploading the documents onto the safe site, a message on the site stated that the upload had been successful, but there was nothing else." AR, Tab 13, Email from GSI to Agency, July 22, 2020 (12:59 p.m.). GSI explained that it submitted its proposal to the agency via email as a "follow through" due to "the absence of a confirmation email" that the proposal was successfully uploaded to DOD SAFE. *Id.* GSI asked the agency what it needed to do if DOD SAFE did not deliver the files but the agency received the files by email. *Id.*

The agency contacted the Defense Information Systems Agency help desk to ascertain whether any files from two contractors, including GSI, had been submitted around 1:50 p.m. on July 21. AR, Tab 14, Email from Agency to Help Desk, July 22, 2020 (8:40 a.m.) and (12:36 p.m.). The help desk representative explained that if the sender had completed the DOD SAFE drop-off process correctly, the agency would have received a notification email. *Id.*, Email from Help Desk to Agency, July 22, 2020 (9:31 p.m.). The contract specialist responded to the help desk and explained that GSI and another contractor said they completed the drop-off process correctly, however, the agency did not receive an email or claim code from DOD SAFE regarding these proposals. *Id.*, Email from Agency to Help Desk, July 23, 2020 (2:14 p.m.). Although the help desk stated that it escalated the inquiry to a different help desk team, it did not respond further. *Id.*, Email from Help Desk to Agency, July 23, 2020 (1:48 p.m.); COS at 5.

In addition to seeking assistance from its help desk, the agency tested the DOD SAFE electronic drop authorization link sent to GSI (and the other contractor) to determine whether the link had been used. *Id.* According to the agency, if the link had been used, the agency would be notified, whereas if the link had not been used, the agency would be able to upload documents using that link. *Id.* Upon testing GSI's electronic drop authorization link, the agency determined that the link had not been used because the link still allowed documents to be uploaded. *Id.*; AR, Tab 15, Request Code Used Snapshot; AR, Tab 16, GSI Drop Link Snapshot.

On July 24, the contracting officer prepared a determination and findings document which concluded that it "could not be proven that GSI [and another contractor] submitted their proposals" in the one of the three ways listed in the solicitation. AR, Tab 17, Determination and Findings at 2. On July 29, the contracting officer emailed GSI and stated that there were no known system issues, the agency received other proposals via DOD SAFE with no issues on the same day, the agency tested GSI's DOD SAFE link and it was not "acting like it was used," and therefore, the agency would not consider GSI's proposal because it was not properly submitted. AR, Tab 18, Email from Agency to GSI, July 29, 2020 (1:23 p.m.). GSI replied to the contracting officer and attached a picture of its employee's computer history showing the individual was on the DOD SAFE site at 1:26 p.m. on July 21, and "followed up the attempted upload with an email . . . stating that she had just attempted to upload the bid packet." AR, Tab 19, GSI and Agency Emails, July 29, 2020 (2:14 p.m.).

On that same day, the contracting officer informed GSI that she could not accept the proposal submitted via email. AR, Tab 20, GSI and Agency Emails, July 29, 2020 (2:50 p.m.). GSI stated that there was strong evidence it had uploaded the documents properly, and that it had uploaded the documents to the DOD SAFE site. *Id.*, GSI and Agency Emails, July 29, 2020 (3:38 p.m.). GSI also argued that there are exceptions and caveats to receiving proposals. AR, Tab 21, Email from GSI to Agency, July 29, 2020 (4:13 p.m.). The agency informed GSI that GSI could file a protest to the agency or our Office. *Id.*, Email from Agency to GSI, July 30, 2020 (10:40 a.m.). GSI filed this protest with our Office on July 31.

DISCUSSION

GSI argues that in accordance with FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisition, it submitted its proposal to the government office designated in the RFP by the time specified, but the Air Force unreasonably decided not to consider its proposal for award.¹ Protest at 2 (*citing* FAR provision 52.215-1(c)(3)(i)); Comments at 2-3. GSI further contends that FAR provision 52.215-1(c)(3)(iv) is intended to require the government to accept a proposal where the proposal did not reach the government office due to circumstances outside of the offeror's control, and that "the intent and essence of this [provision] is applicable" here because the DOD SAFE site malfunctioned. Protest at 2-3; Comments at 2-3. GSI further argues that FAR provision 52.215-1(f)(3) allows agencies to waive informalities and minor irregularities in proposals received.² Protest at 3; Comments at 2-3.

The Air Force asserts that GSI failed to submit its proposal in accordance with the RFP, and the contracting officer's decision not to consider GSI's proposal was reasonable. AR, Tab 2, Memorandum of Law at 4, 7, 12. We agree with the Air Force.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. *Onsite OHS*, B-406449, May 30, 2012, 2012 CPD ¶ 178 at 4 (proposal properly excluded from consideration because it was not submitted through the method authorized by the solicitation). Moreover, the protester has the burden of showing that it timely delivered its proposal to the agency at the specified address. *SigNet Techs., Inc.*, *supra* at 4.

The solicitation here included FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisitions. RFP at 55. This provision states that "[o]fferors are responsible for submitting proposals . . . so as to reach the Government office

¹ The agency references or make arguments based on proposal submission requirements found in FAR provision 52.215-1(c)(3) and FAR 15.208 interchangeably. We note that the language of the relevant exceptions contain no material differences. See *SigNet Techs., Inc.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 2 n.2.

² We have reviewed all of GSI's arguments and although we may not address every variation of these arguments, we find that none provide a basis to sustain the protest.

designated in the solicitation by the time specified in the solicitation.” *Id.* at 56; FAR provision 52.215-1(c)(3). As noted, the RFP provided that the agency would only accept electronic versions of the proposal in one of three ways. RFP at 47. As relevant here, the RFP stated that offerors could submit proposals via the DOD SAFE site, by hand-carrying disks containing the proposal in electronic format, or mailing the disks to Hurlburt Field, Florida. *Id.* The RFP did not permit submission via email. See *id.*

GSI argues that the Air Force should have accepted and considered its proposal sent via email to the contract specialist at 1:59 p.m. on July 21. GSI claims that FAR provision 52.215-1(c)(3)(i), only requires offerors to submit their proposals so as to reach the government office designated in the solicitation by the time specified. Protest at 2; Comments at 2-3. Since GSI’s proposal reached the contract specialist by 1:59 p.m. on July 21, GSI asserts that it fulfilled that requirement and submitted an acceptable proposal. Protest at 2; Comments at 3.

Although the record shows that GSI’s emailed proposal reached the contract specialist’s email inbox 1 minute before the time set for receipt of proposals, this form of submission was not authorized by the RFP. RFP at 47. Since proposals submitted via email directly to the contracting officer and contract specialist were not authorized by the RFP, GSI’s proposal was not submitted to the government office designated in the RFP by the time specified. We find reasonable the agency’s decision not to consider GSI’s emailed proposal here. *Cf. AECOM Tech. Serv., Inc.*, B-411862, Nov. 12, 2015, 2015 CPD ¶ 353 (where agency planned to make multiple awards, no other competitor can claim to have been competitively harmed by accepting proposal submitted to wrong location).

Next, GSI argues that FAR provision 52.215-1(c)(3)(iv) demonstrates an intent to allow agencies to accept proposals in situations where emergencies or unanticipated events occur. GSI contends that an “unanticipated event” occurred when GSI uploaded its proposal to the DOD SAFE site, and something “interrupted the normal government process” and through no fault of GSI, the DOD SAFE site or link “just messed up” in some fashion. Protest at 2-3; Comments at 1-3. GSI argues that it was in possession of the DOD SAFE electronic drop authorization link, and has provided our Office with a screenshot of its internet browsing history showing that DOD SAFE was accessed at 1:26 p.m. on July 21. Protest at 1; Comments at 2-3; Protest, exh. 5, Computer Browsing History. The protester argues that these facts show GSI timely submitted its proposal via DOD SAFE and the agency’s non-receipt of GSI’s proposal was the fault of a DOD SAFE system malfunction. Protest at 3; Comments at 1-3. GSI contends that therefore, the agency must accept GSI’s emailed proposal.

When transmitting a proposal electronically, it is an offeror’s responsibility to submit its proposal sufficiently in advance of the time set for receipt of proposals to ensure proper delivery of the proposal and timely receipt by the agency. *SigNet Techs., supra* at 4-5 (finding no evidence that system error frustrated protester’s ability to submit a proposal where 12 other firms were able to successfully transmit timely proposals). Here, the Air Force received four notifications via DOD SAFE that files had been dropped off by the

due date and time. COS at 4; AR, Tab 10, DOD SAFE Notifications at 1-8. The agency received three proposals from DOD SAFE on July 21 between 12:01 p.m. and 1:52 p.m. AR, Tab 10, Email from DOD SAFE to Agency, July 21, 2020 at 1-6. The agency received one proposal on July 20. *Id.* at 7. The agency states that there were no DOD SAFE network outages on the proposal submission due date. COS at 9.

Further, the agency contacted the help desk to determine whether any files from GSI and another contractor had been dropped off for the agency in DOD SAFE. AR, Tab 14, Email from Agency to Help Desk, July 22, 2020 (8:40 a.m.) and (12:36 p.m.). The help desk representative explained that if the sender had completed the DOD SAFE drop-off process correctly, the agency would have received a notification email. *Id.*, Email from Help Desk to Agency, July 22, 2020 (9:31 p.m.). In addition, the agency tested the DOD SAFE electronic drop authorization link sent to GSI and concluded that GSI's link had not been used because the link still allowed documents to be uploaded. AR, Tab 16, GSI Drop Link Snapshot; AR, Tab 15, Request Code Used Snapshot.

Our Office requested additional information concerning the operating status of DOD SAFE on the date proposals were due. Electronic Protest Docketing System (dkt.) No. 12; Req. for Information at 1. The Air Force provided a detailed response: a statement from the contracting officer; statements from each offeror that successfully utilized DOD SAFE to submit proposals in response to the RFP; a memorandum detailing each offer received through DOD SAFE on July 21, 2020; a memorandum from a contracting flight chief discussing the lack of problems encountered with a different solicitation with an identical submission method and due date/time; and a declaration from a DOD SAFE system and database administrator. Agency Resp. to Req. for Information at 1-13. The offerors that successfully submitted proposals in response to the RFP reported no problems with DOD SAFE. *Id.* at 5-10. In addition, the agency's memorandum shows that on July 21, the Air Force successfully received 10 file submissions from DOD SAFE in response to two solicitations which had the same due date and time (the solicitation at issue in this protest and another solicitation). *Id.* at 3, 11. The DOD SAFE system and database administrator reported that the servers were functioning normally from 1:00 p.m. to 2:00 p.m., local time, July 21, and that no scheduled maintenance was performed on the servers during that time. *Id.* at 12-13.

The exception at FAR provision 52.215-1(c)(3)(iv) provides that if an unanticipated event occurs, "the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume." GSI, however, did not subsequently submit its proposal through the DOD SAFE site. Further, we conclude that GSI has not demonstrated that "normal Government processes," as they relate to the DOD SAFE site were interrupted (*i.e.*, there were no systemic failures). *Federal Acquisition Servs. Team, LLC*, B-410466, Dec. 31, 2014, 2015 CPD ¶ 20 at 4 (no systemic failure where all offerors that diligently pursued submission of their proposals were eventually successful, and the agency received 15 timely proposals). Accordingly, GSI has not demonstrated this exception provides a basis to sustain the protest. It was GSI's

responsibility to submit its proposal sufficiently in advance of the time set for receipt of proposals to ensure proper delivery of the proposal and timely receipt by the agency. See *SigNet Techs., Inc.*, *supra*.

Finally, GSI argues that FAR provision 52.215-1(f)(3) allows agencies to waive informalities and minor irregularities in proposals received, which in this case means the agency should accept the proposal GSI submitted via email. However, as GSI and the agency note, this FAR provision specifically allows waivers “in proposals received.” RFP at 56; FAR 52.215-1(f)(3)(“The Government may waive informalities and minor irregularities in proposals received.”). As the agency never received GSI’s proposal in accordance with the solicitation requirements, this FAR provision is inapplicable in this situation. *Cf. Tishman Constr. Corp.*, B-292097, May 29, 2003, 2003 CPD ¶ 94 (where solicitation required offerors to submit both paper and electronic versions of proposals, the late delivery of the paper version was a minor informality that should have been waived because the protester submitted a timely electronic version in accordance with the solicitation).

The protest is denied.

Thomas H. Armstrong
General Counsel