



Decision

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Matter of: Starblast Corporation

File: B-419948

Date: September 21, 2021

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DIGEST

Protest that agency improperly rejected protester's proposal is denied where the protester did not submit a compliant proposal prior to the time for receipt of initial proposals, and the protester fails to establish that the late proposal exceptions in Federal Acquisition Regulation provision 52.215-1(c)(3) are applicable.

DECISION

Starblast Corporation, of Solana Beach, California, protests the rejection of its proposal by the Department of the Navy, Naval Supply Systems Command, under request for proposals (RFP) No. N6264921R0038, for worldwide expeditionary support and services in a variety of regions across the world. The protester contends that the agency should have considered Starblast's proposal under a Federal Acquisition Regulation (FAR) exception to the rule that a late proposal will not be considered.

We deny the protest.

BACKGROUND

The RFP, issued on March 2, 2021, contemplated the award of fixed-price Worldwide Expeditionary Multiple Award Contracts--known as WEXMACs--for broad categories of services and supplies in support of humanitarian assistance and disaster relief, contingency operations, and exercises. Protest, attach. A, RFP at 1, 69; Protest, attach. B, Performance Work Statement (PWS) at 1. The worldwide solicitation covered

22 regions and allowed offerors to propose to provide assistance to any region, or combination of regions; the RFP provided that the agency would make multiple awards to all qualifying offerors who were determined responsible. PWS at 1-2; RFP at 75. A “qualifying offeror” is one that the agency determines to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and provides the contracting officer no reason to believe that the offeror would be likely to propose other than fair and reasonable pricing. RFP at 75.

The solicitation provided that the agency would evaluate proposals under four factors: general standard of responsibility (found in FAR section 9.104-1); special standard of responsibility; compliance with the solicitation; and pricing assessment. *Id.* at 75-76. The special standard of responsibility factor contained the following four elements: element 1, financial capability; element 2, asset availability and readiness; element 3, agile and rapid response; and element 4, quality. *Id.* at 76.

The RFP listed four email addresses to which offerors were to submit their proposals and required that all proposals must be received no later than 3:00 pm JST (Japanese Standard Time), Monday, April 19, 2021. *Id.* at 70. With regard to the electronic submission of proposals, the RFP advised offerors that emailed proposals “shall be in either Adobe or Microsoft Word format.” *Id.* The RFP further advised offerors that “the Government may be unable to receive other types of electronic files (e.g., .zip files) or files in excess of 10 megabytes.” *Id.*

The RFP stated that, to be timely, “an email proposal must be received in its entirety in the designated email box by the due date and time for proposal submission.” *Id.* The RFP further provided that “[a]n e-mail proposal that resides on a [g]overnment server, but has not appeared in the designated e-mail inbox by the due date and time for proposal submission will be considered late unless the exception at FAR 52.215-1(c)(3)(ii)(A)(1) applies.” *Id.* That exception provides that a proposal “received at the [g]overnment 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 [c]ontracting [o]fficer determines that accepting the late offer would not unduly delay the acquisition[,]” and “[i]f 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 proposals[.]” FAR provision 52.215-1(c)(3)(ii)(A)(1).

Just prior to the submission deadline, the Navy received an email from Starblast that contained five attachments and two web-links to drive.google.com addresses. Protest, attach. A at 11, Email from Starblast to Navy. Although labeled “Element 1-Financial Capacity” and “Element 4-Quality,” the two drive.google.com addresses included proposal information related to all four elements of the special standard of responsibility factor. Protest, attach. A at 11, Email from Starblast to Agency, Apr. 18, 2021; Protester’s Response to GAO Request at 2. On April 20, the contracting officer advised Starblast that the Navy was unable to access files contained on a separate drive, such as Google Drive links, and that the documents attached to the email alone “do not meet

the required documentation as described in section L of the solicitation[.]” Protest, attach. A at 14, Email from Contracting Officer (CO) to Starblast, April 20, 2021. As a result, the protestor’s proposal was considered non-compliant with the requirements of the solicitation.

The contracting officer requested that Starblast resubmit financial capability and quality elements by 4:00 pm JST April 20, 2021, or Starblast’s “proposal will be determined non-compliant with the solicitation requirements and you will not be considered for award.” *Id.* Starblast responded that it would “resend the files you requested in Adobe PDF format[.]” Request for Dismissal, exh. 1, Email from Starblast to CO. The Navy asserts that it did not receive the files labeled Element 1-Financial Capacity and Element 4-Quality by the revised deadline or prior to contract award. Request for Dismissal, exh. B, Decl. of Procuring Contracting Officer at 2. In fact, the agency asserts that it never received “a proposal from Starblast that conforms to the solicitation requirements.” *Id.*

On June 15, the Navy provided Starblast with notice that its proposal was unsuccessful. Protest, Notice of Unsuccessful Offeror, attach. A. at 17-20. That notice included the names of the 29 awardees. *Id.* at 17-19. The notice also identified the five areas in which Starblast’s proposal was not in compliance with the RFP. See *id.* at 19, (noting that Starblast’s proposal lacked the following: a completed representations and certifications; a completed RFP attachment 2; a subcontracting narrative; an explanation of how Starblast would ensure that offered prices were fair and reasonable; and a narrative documenting the offeror’s responsibility that addresses each of the general and special standards of responsibility).

Starblast asserts that its Chief Executive Officer (CEO) spoke with the contracting officer on June 16, and that the contracting officer “invited” him to resubmit Starblast’s proposal, which he did via email message of June 17. Protest, decl. of Starblast CEO at 2. The contracting officer disputes the protester’s account of the call, contending that, in his conversation with the Starblast CEO, the contracting officer “did not state or imply that the Government would re-evaluate Starblast’s proposal[.]” consider any additional proposal information Starblast might submit, or “reconsider its decision to not award a contract to Starblast.” Req. for Dismissal, decl. of CEO.

Starblast requested a post-award debriefing. Protest, attach. A. at 21, Email from Starblast to Agency. The debriefing considered Starblast’s assertion that the protester had submitted its proposal in the format required by the RFP and the agency’s contention that it did not receive those emails. See *id.* at 22-36. The Navy concluded the debriefing on June 23, noting that “a review of each of the Government addressees’ emails reveals that an email was not received by any of the addressees from [Starblast], nor was any additional proposal information received from Starblast by the due date/time in the solicitation.” *Id.* at 38, Conclusion of Post-Award Debriefing at 2. This protest followed.

DISCUSSION

Starburst contends that the Navy should have considered its proposal under the FAR's electronic commerce exception to the late proposal rule. Protest at 4, *citing* FAR 15.208(b)(1)(i).¹ The agency contends that it never received a compliant proposal from the protester and thus reasonably excluded the protester's proposal from consideration. Req. for Dismissal at 9-10. The agency explains that the government server rejected the protester's emails because the attached files were too large. *Id.* at 5.

The FAR exception on which Starburst relies provides that a proposal will not be considered late if it is received before award is made, will not unduly delay the acquisition, and "[i]f 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 proposals." FAR 15.208(b)(1)(i); *see also* FAR 52.215-1(c)(3)(ii)(A)(1).

Starblast contends that, because the contracting officer's June 16 invitation for Starblast to resubmit its proposal contained no deadline for that resubmission, Starblast's June 16 proposal transmission was "not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals."² Protest at 4, *quoting* FAR 15.208(b)(1)(i).

Starblast's argument lacks merit, for several reasons. As an initial matter, where, as here, the conflicting statements of the protester and the agency constitute the only available evidence of what transpired, the protester has not carried its burden of affirmatively establishing the accuracy of its assertion. *Sunset Realty Sales Assocs.*, B-221390, Mar. 31, 1986, 86-1 CPD ¶ 303 at 3. Given the conflicting accounts of the conversation between the contracting officer and the protester, Starblast's own recollection that the agency invited the protester to resubmit its proposal--without providing a deadline for doing so--does not provide a basis for sustaining the protest.

¹ Section 15.209 of the FAR directs the contracting officer to insert into the solicitation the provision at FAR 52.215-1, "Instructions to Offerors-Competitive Acquisitions," where the government intends to award a contract without discussions. FAR 15.209(a). The FAR language applicable to this protest is identical, and the record cited to both the FAR section and provision interchangeably.

² We note that there is a general legal requirement for a common cutoff date for submission of proposals. *Raytheon Tech. Servs. Co. LLC*, B-404655.4, *et al.*, Oct. 11, 2011, 2011 CPD ¶ 236 at 7, *citing* FAR 15.307(b) (noting that the "contracting officer is required to establish a common cut-off date[.]"). An agency's extension of the deadline for one offeror, without an extension of the deadline for all offerors, violates the requirement for a common cut-off date for all offerors. *Systems 4, Inc.*, B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 2. To the extent that the protester's argument relies on this deadline extension--provided only to Starblast--the extension itself was unreasonable and thus provides no basis on which to sustain the protest.

Furthermore, the late proposal exception on which the protester relies is in any event inapplicable since that the protester's proposal never reached the designated email addresses. See *ManTech Advanced Sys. Int'l, Inc.*, B-414985, Oct. 20, 2017, 2017 CPD ¶ 324 at 4 n.3. As previously noted, FAR section 15.208(b)(1) provides that a proposal 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 "[i]f 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 proposals[.]" FAR 15.208(b)(1); see also FAR 52.215-1(c)(3)(ii)(A)(1). The protester maintains that the language in FAR section 15.208(b)(1)--providing that a late proposal will not be considered unless it is received at the designated location before contract award--should not be given effect where a proposal submitted via an authorized electronic commerce method is received at the agency's initial point of entry prior to 5:00 p.m. one working day prior to the date specified for receipt of proposals.³ We disagree with the protester's assertion that its proposal was received one working day prior to the deadline for receipt of proposals.

Contrary to Starblast's argument, receipt of a proposal at the initial point of entry prior to 5:00 p.m. the day before proposals are due is not an independent exception to the rule that late proposals will not be considered--it is one of several conditions that must be satisfied for a late proposal to be considered. Another condition that must be satisfied is that the proposal was received at the designated location, which the RFP here defined as four specific email addresses, before award is made. Here, the agency asserts that it never received a compliant proposal.

Because Starblast's proposal submission did not meet the conditions necessary to make applicable the FAR exception to the late proposal rule, the protester has no basis to argue that the agency unreasonably excluded the protester's proposal from consideration.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

³ According to the protester, "[i]f proposals had to make it all the way to the designated inboxes, then there would be no need for the exception at all[.] [t]he inboxes and the initial point of entry would be exactly the same thing." Protester's Response to Agency Document Production, July 26, 2021, at 3.