



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: ALJUCAR, LLC

File: B-401148

Date: June 8, 2009

Rudy Sutherland for the protester.

Karen M. Reilley, Esq., and Monica A. Ceruti, Esq., National Aeronautics and Space Administration, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's hand-delivered proposal as late where the protester significantly contributed to the late receipt of the proposal by failing to allow sufficient time for timely delivery of the proposal.

DECISION

ALJUCAR, LLC, of Missouri City, Texas, protests the agency's rejection of its proposal as late under request for proposals (RFP) No. NNJ09227181R, issued by the National Aeronautics and Space Administration (NASA), Lyndon B. Johnson Space Center, for process improvement and project services. The protester, which allowed only 8 minutes from arrival at a Space Center security checkpoint to drive to the building designated for the receipt of proposals, contends that a delay allegedly caused by improper action by the security guard at the checkpoint made it impossible for the protester to timely deliver its proposal.

We deny the protest.

The RFP provided that

[o]fferors are responsible for submitting proposals . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation [A proposal received] 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 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.

RFP § L.2(c)(3)(i), (ii). The RFP instructed that all proposals were to be hand delivered to building 421 (Central Receiving) at the Space Center no later than 2 p.m. on December 18, 2008; offerors were advised that no extension to the submission deadline was to be expected. Id. at § L.7, L.12. The RFP further advised that the delivery process might require an hour or more for proposal packages to be screened through security and delivered. Id. Offerors were directed to enter the Space Center, a secure facility, at Gate 4 and proceed to a nearby security checkpoint (Post 12). Id.

The protester states that two principals of ALJUCAR arrived at the security checkpoint at 1:52 p.m. to deliver the firm's proposal to building 421 before the scheduled 2 p.m. closing; the protester estimates that it is a 3-5 minute drive to the building from the checkpoint. The protester states there was a delay at the checkpoint, however, because a security guard there determined that one of the protester's representatives did not have adequate identification. According to the protester, the guard would not allow the individual to remain at the security checkpoint or walk unescorted to the base exit at Gate 4; rather, the individual was to be driven back to the nearby exit.

At that point, the protester states, one of its representatives called the contracting officer from the security checkpoint to notify him of the matter, and the contracting officer informed him that the contracting specialist would come to the security checkpoint to receive the firm's proposal. ALJUCAR does not state what time it was when its representative gave its proposal to the contracting specialist at the security checkpoint. The contracting specialist, on the other hand, reports that it was after 2 p.m. when she received the contracting officer's request to leave building 421 to drive to the security checkpoint to receive the proposal.¹ After the firm's proposal was loaded in the contracting specialist's car, she apparently spent several minutes

¹ As stated above, the protester contends that its representatives arrived at the Space Center at 1:52 p.m., 8 minutes prior to the scheduled closing time for the receipt of proposals. The agency reports, however, that its security checkpoint records, and the recollection of the security guard, contracting officer, contracting specialist, and another employee who accompanied the contracting specialist to the security checkpoint area, indicate that ALJUCAR's representatives did not arrive at the Space Center until after 2 p.m. We see no need to resolve the discrepancy, since, as discussed in this decision, even under the times set out by the protester, we find the protester's failure to allow sufficient time for timely delivery was the paramount reason for late receipt of its proposal.

speaking to one of the protester's representatives, then she returned to building 421 where the proposal was logged in as delivered at 2:29 p.m., 29 minutes after the scheduled closing time.

By letter of January 5, 2009, the agency informed ALJUCAR that, since the firm's proposal had not been under government control prior to the time set for the receipt of proposals, it was rejected as late. On January 7, ALJUCAR filed an agency-level protest asserting that the security guard's improper decision not to allow one of ALJUCAR's representative to either walk to the base exit unescorted or remain at the security checkpoint while the other representative delivered the proposal made it impossible for the firm to deliver its proposal on time. The agency denied the protest on February 23, finding that the protester's allegation of improper government action was not adequately supported and concluding that, since the contracting specialist reported she did not receive the proposal from the protester at the security checkpoint until after 2 p.m., the proposal (logged in as delivered at 2:29 p.m.) was late. This protest followed.²

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. Integrated Support Sys. inc, B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. However, a hand-carried proposal that arrives late may be considered if improper government action was the paramount cause for the late submission, and where consideration of the proposal would not compromise the integrity of the competitive process; improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id. Nonetheless, 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 acting reasonably in fulfilling its responsibility to deliver a hand-carried proposal to the proper place by the proper time. See O.S. Sys., Inc., B-292827, Nov. 17, 2003, 2003 CPD ¶ 211 at 3.

² ALJUCAR contends that the contracting officer told the firm that delivery to the contracting specialist at the security checkpoint would constitute government control of the proposal, and that the contracting specialist allegedly delayed taking the firm's proposal from the security checkpoint to the designated location for the receipt of proposals. These contentions are untimely since they were not raised in the firm's agency-level protest or otherwise raised by the firm within 10 calendar days of receipt of the information providing the bases of protest (i.e., the agency's rejection letter of January 5 in which the firm was told its proposal was determined not to have been under government control prior to the 2 p.m. closing time). Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2009). In any event, since ALJUCAR has not alleged or demonstrated that its proposal was in fact delivered to the contracting specialist prior to the 2 p.m. closing time, the firm has failed to show how either contention would be determinative of whether its proposal was received late.

Our review of the record here shows no evidence that the ALJUCAR proposal was in fact received by the agency prior to the 2 p.m. closing time. The contracting specialist reports arriving after 2 p.m. to retrieve the proposal. While the protester states it was on the telephone with the contracting officer minutes before closing, it has not shown that the proposal was under government control prior to 2 p.m. Rather, the protester argues that the sole cause of the proposal's untimely receipt was the delay caused by the guard at the security checkpoint. ALJUCAR contends that the guard's failure to allow the firm's representative who lacked adequate identification to either wait at the checkpoint or leave the checkpoint, unescorted, to exit the base was improper government action. ALJUCAR disagrees with the agency's position that the guard's action was appropriate under the agency's general security policies regarding access and movement controls at a secure facility such as the Space Center. As the agency points out, however, even if the guard acted in error, we cannot conclude that his action was the sole or paramount cause of the proposal being received late, since the representatives of the protester--which had the primary responsibility for delivering its proposal on time--significantly contributed to the lateness of the proposal.

Despite numerous RFP instructions emphasizing the offeror's responsibility for timely submission, including that the offeror should anticipate it taking up to an hour to complete the required security screening for proposal submissions, the protester's representatives arrived on the base only 8 minutes before closing. ALJUCAR simply did not allow sufficient time to fulfill its responsibility to deliver its proposal by the proper time. See Wyatt and Assocs., B-243349, July 1, 1991, 91-2 CPD ¶ 5 at 2-3. Given the RFP warnings and the secure nature of the NASA installation, the protester should have reasonably anticipated delay in gaining access to the facility. See, e.g., Einhorn Yaffee Prescott, B-259552, Mar. 20, 1995, 95-1 CPD ¶ 153 at 4. In short, ALJUCAR assumed a risk in allowing so little time for delivery of its proposal here. Id. In these circumstances, where the protester did not act reasonably to fulfill its obligation to deliver its proposal on time, we find no basis to question the agency's decision to reject the proposal as late.

The protest is denied.

Daniel I. Gordon
Acting General Counsel