



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: RDT-Semper Tek JV, LLC

File: B-408811

Date: December 9, 2013

Robert J. Symon, Esq., Jeremiah S. Regan, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for the protester.
Steven W. Feldman, Esq., Department of the Army, Corps of Engineers, for the agency.
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected the protester's hand-delivered proposal as late where the record does not establish that the proposal was submitted prior to the time established in the solicitation, and the protester significantly contributed to the late receipt of the proposal by failing to allow sufficient time for delivery.

DECISION

RDT-Semper Tek JV, LLC, of Florence, Alabama, protests the rejection of its proposal as late by the Department of the Army, Corps of Engineers, Engineering and Support Center, Huntsville, under request for proposals (RFP) No. W912DY-13-R-0015 for facility repair and renewal design-build construction.

We deny the protest.

BACKGROUND

As amended, the RFP set the time for receipt of proposals at 2 p.m. central time, August 13, 2013. RFP amend. 3, § 1.10. The RFP instructed offerors to submit proposals to the following address: "US Army Engineering & Support Ctr, CEHNC-CT, 4820 University Square, Huntsville, AL 35816." Id. The solicitation provided telephone numbers for the contract specialist and the contracting office main desk, and instructed offerors who intended to deliver their proposals by hand to call prior to delivery, "[d]ue to heightened security at Government installations." Id. The solicitation stated that proposals were to be delivered to 4820 University

Square, Huntsville, Alabama, to the mailroom located on “the north side of the building.” Id. The contracting officer states that the mailroom door is faded red and the words “MAILROOM,” as well as the hours of operation are prominently displayed on the door. Contracting Officer’s Statement at 1.

The RFP incorporated by reference Federal Acquisition Regulation (FAR) clause 52.215-1, which provides, among other things, that proposals received at the government office designated in the solicitation after the exact time specified for receipt of offers will be viewed as “late” and will not be considered, except in certain circumstances. FAR § 52.215-1(c). The late proposal rules include limited exceptions under which late proposals may be considered, including, as discussed below, when the a proposal is found to have been received at the designated government installation and was under the agency’s control at the time set for receipt of proposal. Id. § 52.215-1(c)(iii).

The record here shows that certain of the facts about this protest are not in dispute. For example, there is no dispute that a representative of RDT called the contract specialist about four or five hours before the time that proposals were due, in accordance with the RFP’s instructions. Agency Report (AR), Tab 3, Decl. of Contracting Specialist (Sept. 27, 2013), at 1; Contracting Officer’s Statement at 1. In addition, the record reflects that the contract specialist instructed the RDT representative to go to the north side of the building, which was “around back,” and knock on the red door marked “MAILROOM,” as there was no doorbell. Id. The RDT representative indicated that he understood these instructions. Id. Following delivery of RDT’s proposal, the protester’s representative was given a receipt that was stamped 2:03 p.m.--three minutes after the time set in the solicitation. Id. at 6; Protest, exh. B, Receipt (2:03 p.m., Aug. 13, 2013).

We turn next to the portion of this protest where the protester and agency disagree about the facts. According to a statement prepared by RDT’s representative, he arrived at the facility, parked his car, and knocked at the mailroom door “at approximately 1:58 p.m.” Decl. of RDT Representative (Aug. 30, 2013), at 2. He explained that the door was opened “almost immediately” by a female mailroom clerk. Id. He informed her that he had a proposal to drop off, and she escorted him to a counter in the mailroom where she then asked him if he wanted a receipt. Id. The RDT representative requested a receipt, and the mailroom clerk walked to the back of the mailroom, turned left and went out of his sight, and “was gone for several minutes.” Id. When the clerk returned she handed the RDT representative a hand-written receipt on a plain piece of paper. The RDT representative then thanked her, picked up the receipt, and left. Id. The RDT representative states that he did not read the receipt when it was given to him because he was so confident that the package had been delivered on time. Id.

The mailroom clerk tells a different story. The clerk is an employee of an agency contractor, and states that she has received training concerning the proper protocol

for handling proposals, including late proposals. AR, Tab 6, Decl. of Mailroom Clerk (Sept. 26, 2013), at 1. She explains that she and other mailroom personnel were briefed by the contract specialist that proposals were due by 2 p.m. on August 13, and were warned that a large number of proposals were expected. Id. The clerk also explains that she was to accept any late proposals, but to alert the contract specialist. Id.

Regarding the events on August 13, the clerk states that she heard a knock on the door in the afternoon and hurried to open the door. Id. On her way to open the door she noticed that the clock, which is at eye level and very close to the door, indicated that it was after 2 p.m. Id. The clerk states that when she opened the door, there was a man with a package who stated that he wanted a receipt for proof of delivery. Id. She explains that while most people bring their own receipts, the protester's representative did not do so. The clerk states that she told the RDT representative "Yes, give me a second," prepared a handwritten receipt, "dashed over to" the date/time stamp machine in the mailroom, and stamped the receipt. Id.¹ The clerk states that she stamped the receipt within 30 seconds or less after the man walked into the mailroom. Id. As the record shows, the time stamped on the receipt was 2:03 p.m. Protest, exh. B, Receipt (2:03 p.m., Aug. 13, 2013). The clerk then returned to the RDT representative, and handed him the stamped receipt. AR, Tab 6, Decl. of Mailroom Clerk (Sept. 26, 2013), at 1. She estimates that the entire exchange took around 60 seconds. Id. at 2. When the clerk's supervisor returned, the clerk advised her supervisor about RDT's late proposal. Id.

The agency subsequently informed RDT that its proposal was rejected as untimely, and was therefore ineligible for award. This protest to our Office followed.

DISCUSSION

RDT argues that its proposal was delivered before the time set for submission, and contends that the agency's rejection was improper because of the actions of the mailroom clerk. Specifically, the protester contends that the clerk accepted the proposal before the time for acceptance of proposals had passed and then delayed in putting a date/time stamp on the proposal. The protester contends that regardless of the time indicated on the receipt, RDT's proposal was possessed by, and under the control of, the agency for several minutes prior to the proposal submission deadline.

It is an offeror's responsibility to deliver its proposal to the place designated in the solicitation by the time specified, and late receipt generally requires rejection of the

¹ She states that it is her practice to date/time stamp receipts in order to ensure an accurate reading, and then add a handwritten notation. AR, Tab 6, Decl. of Mailroom Clerk (Sept. 26, 2013), at 1.

proposal. FAR § 15.208(a); O.S. Sys., Inc., B-292827, Nov. 17, 2003, 2003 CPD ¶ 211 at 3; Integrated Support Sys. Inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. Unless a preponderance of the evidence demonstrates that the proposal was at the designated location for receipt prior to the time set for closing, the proposal may not be considered for award. See Med-National, Inc., B-277430, Sept. 8, 1997, 97-2 CPD ¶ 67 at 3. A late hand-carried proposal may be considered for award, however, if improper government action was the paramount cause of the late delivery and consideration of the proposal would not compromise the integrity of the competitive procurement process. Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id.

For example, our Office has held that a late hand-carried offer may be considered for award if the government's misdirection or improper action was the paramount cause of the late delivery and consideration of the offer would not compromise the integrity of the competitive process. See Palomar Grading & Paving, Inc., B-274885, Jan. 10, 1997, 97-1 CPD ¶ 16 at 3. A late proposal may also be accepted if it is found to have been received at the designated government installation and was under the agency's control at the time set for receipt of proposal. Id. at 3. 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 doing all it could or should have done to fulfill its responsibility to deliver a hand-carried proposal to the specified place by the specified time. ALJUCAR, LLC, B-401148, June 8, 2009, 2009 CPD ¶ 124 at 3; O.S. Sys., Inc., supra.

Here, both the mailroom clerk's story and RDT's story were corroborated in part by the mailroom supervisor. On the day in question, the supervisor explains that she was taking a break from 1:45 to 2:10 p.m. in her car in the parking lot adjoining the Corps of Engineers building. AR, Tab 4, Decl. of Mailroom Supervisor (Sept. 26, 2013), at 2. The supervisor states that she saw a car driven by a man she did not know enter the parking lot and circle around looking for parking; she did not see him park the car. Id. The supervisor then saw the same man, this time with a box, at the mailroom door, which was promptly opened by the clerk. Id. The supervisor states that she then saw "the same man leave the facility a very short time later--not more than a minute or two--after he entered the building." Id. at 2. The supervisor explains that she paid close attention to the man as he entered and exited the mailroom because she was aware that proposals were due that afternoon. Id.

As discussed above, there is no dispute in this record that the agency gave the protester a stamped and handwritten receipt showing that RTD's proposal was received at 2:03 p.m. Protest, exh. B, Receipt (2:03 p.m., Aug. 13, 2013). The protester does not dispute the accuracy of the time stamp. Instead the protester contends that its representative entered the mailroom at "approximately 1:58 p.m."

and handed the proposal to the mail clerk. Decl. of RDT Representative (Aug. 30, 2013), at 2. The declaration of RDT's representative does not, however, explain the basis for his statement regarding the time that he entered the building; for example, he does not state whether this time was based on his own clock or the clock in the mailroom. See id. As our Office has held, the time maintained by an agency for receiving bids or proposals is determinative, unless that time standard is found to be unreasonable under the circumstances. See U.S. Aerospace, Inc., B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 9.

In addition, the clerk states that, according to the clock in the mailroom, RDT's representative did not enter the mailroom until after 2:00 p.m. AR, Tab 6, Decl. of Mailroom Clerk (Sept. 26, 2013), at 1. We also note that the statements provided by the mailroom clerk and the mailroom supervisor are consistent. See id. at 1-2; AR, Tab 4, Decl. of Mailroom Supervisor (Sept. 26, 2013), at 2. In the absence of any basis to question the agency's statements about when the protester arrived--i.e., after 2 p.m.--we conclude that the preponderance of the evidence does not support the protester's contention that the agency mishandled its proposal. See Med- National, Inc., supra; Caddell Constr. Co., Inc., supra.

We also find that the protester's attempt to make the delivery only a couple of minutes before the time deadline was the paramount cause of the lateness.² RDT simply did not allow sufficient time to fulfill its responsibility to deliver its proposal by the proper time. See Wyatt & Assocs., B-243349, July 1, 1991, 91-2 CPD ¶ 5 at 2-3. In short, RDT assumed a risk in allowing so little time for delivery of its proposal here. Einhorn Yaffe Prescott, B-259552, Mar. 20, 1995, 95-1 CPD ¶ 153 at 4. 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.

Susan A. Poling
General Counsel

² Moreover, by the protester's own account, its representative first knocked at the mailroom door at 1:58 p.m. The representative then explains that the clerk was gone for several minutes before returning with a receipt. However, the representative states that he did not read the receipt because he was "confident" the package had been delivered on time. Decl. of RDT Representative, supra. If several minutes had passed since 1:58 p.m., we fail to see how the representative could be confident the receipt reflected a time not later than 2 p.m.