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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Northstar Location Services LLC

File: B-409722.10

Date: May 8, 2015

James P. Domagalski, Esq., Nicholas J. DiCesare, Esq., and Kimberly A. Colaiacovo, Esq., Hiscock & Barclay LLP, for the protester.
Michael S. Taylor, Esq., Department of Education, for the agency.
Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly declined to consider protester's proposal revision where it was received by the agency after the time set for submission.

DECISION

Northstar Location Services LLC, of Cheektowaga, New York, protests the rejection of its proposal as late under request for proposals (RFP) No. ED-FSA-13-R-0010 issued by the Department of Education for student loan debt collection and administrative resolution services.

We deny the protest.

BACKGROUND

The Department of Education, Office of Federal Student Aid, contracts with private collection agencies to support its collection and administrative resolution activities for debts resulting from non-payment of student loans under several federal financial aid and loan programs. The solicitation, issued on July 30, 2013, provided for a 2-phase procurement for the award of multiple indefinite-delivery/indefinite-quantity contracts for a 5-year base period and a 5-year option period for student debt collection and administrative services. RFP amend. No. 19 at 3.

In April 2014, at the completion of phase I of the procurement, the agency selected 42 firms, to include Northstar, to submit phase II proposals. Contracting Officer's (CO) Statement of Facts at 1. At that time, phase II proposals were due by 5 p.m.

on July 23, 2014; Northstar submitted a timely phase II proposal. Protest at 4. On December 19, however, the agency issued amendment No. 17 to the solicitation, which, among other things, substantially revised the evaluation criteria and set a new closing time of 5 p.m. on January 16, 2015 for the receipt of revised proposals.

On January 13, the agency issued amendment No. 20 providing answers to questions submitted by the offerors; the 5 p.m., January 16 closing time, however, remained unchanged. In its answers to offeror questions, and relevant to this protest, the agency specifically instructed offerors that their initial phase II proposals would not be considered in the evaluation for award due to the changes effected by amendment 17. Amend. No. 20, Question and Answer (Q&A) Nos. 26 and 216. All offerors were also instructed that late proposals would not be accepted. *Id.* at No. 176. Accordingly, all offerors were to submit phase II proposals based on the revised solicitation by 5 p.m. on January 16. The agency reports that 37 firms submitted timely proposals. Agency Report, Memorandum of Law at 2; CO Statement of Facts at 2. Northstar's proposal, which was received by the agency at 5:27 p.m. on January 16, was rejected as late. *Id.* Upon learning of the agency's decision in this regard, Northstar timely filed this protest.

DISCUSSION

Northstar challenges the agency's rejection of its proposal as late.¹ The protester primarily contends that since the protester's submission allegedly provided more favorable terms than its initially submitted phase II proposal, the agency was required to accept it pursuant to Federal Acquisition Regulation (FAR) § 15.208(b)(2).² Protest at 2.

As set forth in FAR § 15.208, offerors are responsible for submitting proposals, revisions, and modifications to the proper place at the proper time. Late submissions of proposals, revisions, and modifications may not be considered, except, as is pertinent here, where the late submission is received before award,

¹ In its protest, Northstar represents that in the course of scanning its proposal for submission by e-mail, sections of the document "repeatedly bounced back to Northstar" and "[a]fter numerous attempts, the proposal was successfully submitted to the Department, albeit a short time after the time set forth in Amendment 17." Protest at 5.

² Northstar mistakenly asserts that the agency was required to suspend the closing date as a consequence of a protest filed by another offeror challenging the terms of the solicitation prior to the time for the receipt of proposals. The statutory stay provisions referenced by Northstar only provide for a stay of the agency's award of, and performance of, contracts, not the submission of proposals. *See* 31 U.S.C. §§ 3553(c)(1), (d)(3)(A); FAR §§ 33.104(b)(1), (c)(1); *see also Caddell Constr. Co., LLC v. United States*, Nos. 15-135C, 15-136C, ___ Fed. Cl. ___ (Apr. 14, 2015).

and is a late modification of an otherwise successful proposal that makes its terms more favorable to the government. FAR § 15.208(a)-(b)(2); See Seven Seas Eng'g & Land Surveying, B-294424.2, Nov. 19, 2004, 2004 CPD ¶ 236 at 4. An “otherwise successful proposal” is one that is already in line for a contract award regardless of the late modification. See Philips Healthcare Informatics, B-405382.2 et al., May 14, 2012, 2012 CPD ¶ 220 at 7; see also RMS Indus., B-245539, Dec. 9, 1991, 91-2 CPD ¶ 528 at 3.

Here, Northstar’s second phase II proposal submission cannot be considered a modification to an “otherwise successful proposal” since, as established above, the agency had nullified all the initial phase II proposals due to the solicitation changes associated with the issuance of amendment 17. Amend. No. 20, Q&A Nos. 26, 91, 214, and 216. In this regard, the agency expressly advised offerors that they remained on equal standing at what amounted to a restart of the phase II competition. Amend. No. 20, Q&A No. 26 (explaining that “[p]reviously submitted proposals will not influence the evaluation process”). As a consequence, at the time of the second phase II submissions, the agency had not evaluated proposals and had not identified any otherwise successful offerors.³ See Team Systems Int’l, LLC, B-410420, Dec. 19, 2014, 2014 CPD ¶ 378 at 3; LATG, Inc., B-409679.2, July 31, 2014, 2014 CPD ¶ 226 at 3-4; The Sandi Group, Inc., B-401218, June 5, 2009, 2009 CPD ¶ 123 at 3-4. Accordingly, the protester has not provided any basis to question the reasonableness of the agency’s rejection of its phase II proposal as late.

The protest is denied.

Susan A. Poling
General Counsel

³ Northstar provides no factual support for its suggestion that awards were to be made to all phase II offerors. On the contrary, offerors were informed that the number of anticipated awards had not been determined. See Amend. No. 20, Q&A Nos. 10, 29, 43, 51, 105, and 213. Further, Northstar has not supported its contention that its proposal should be considered timely under FAR § 15.208(b)(1), which provides several conditions for the acceptance of a late proposal where it would not unduly delay the acquisition, since Northstar has not shown that any one of the three alternate requirements for the application of the provision are present here. See FAR §§ 15.208(b)(1)(i), (ii), and (iii).