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Decision

Matter of: VERSA Integrated Solutions, Inc.

File: B-420530

Date: April 13, 2022

Richard L. Moorhouse, Esq., and Aaron M. Levin, Esq., Greenberg Traurig LLP, for the protester.

William Shim, Esq., and Pamela Waldron, Esq., Department of Health and Human Services, for the agency.

Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider offeror's proposal is denied where the proposal was not timely received by the agency in a manner consistent with the terms of the solicitation.

DECISION

VERSA Integrated Solutions, Inc., an 8(a) small business of Beltsville, Maryland, protests the rejection of its proposal as late under request for proposals (RFP) No. FDA-22-SOL-1231488, issued by Department of Health and Human Services, Food and Drug Administration, for audio and visual support services. The protester contends the agency lacked a reasonable basis for rejecting its proposal.

We deny the protest.

BACKGROUND

On October 21, 2021, the agency issued the RFP as a set-aside for 8(a) small businesses in accordance with the procedures of Federal Acquisition Regulation (FAR)

parts 12 and 15.¹ Agency Report (AR), Tab 1.3, RFP amend. 2 at 2; AR, Tab 5, Contracting Officer's Statement (COS) at 1.² The RFP anticipated the award of a single indefinite-delivery, indefinite-quantity contract with five 1-year ordering periods. RFP at 15.

The RFP provided for the submission of proposals in two parts. *Id.* at 86. Part one submissions were to consist of the offeror's corporate experience and technical approach concept paper; part two submissions were to consist of the offeror's technical approach, management approach, past performance, and price. *Id.* at 86-87. The agency would evaluate part one submissions first, and then send a notification to offerors who submitted a timely proposal, advising them as to whether the agency recommended that they submit a proposal for part two. *Id.* As relevant here, part one proposals were to be submitted electronically via email to the contract specialist (at a specified email address) with a courtesy copy, "cc:" to the contracting officer (at another specified email address). *Id.* The deadline for part one proposals was 12:00 p.m. Eastern Standard Time (EST) on November 12, 2021. *Id.*

The solicitation incorporated by reference FAR provision 52.212-1 (Instructions to Offerors--Commercial Items). *Id.* at 58. Subsection (f) of this provision provides in relevant part as follows:

(2)(i) Any offer, modification, revision, or withdrawal of an offer 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-

(A) If 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 offers; or

(B) 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.

FAR provision 52.212-1(f)(2)(i)(A)-(B).

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) program.

² The RFP was amended twice; all citations are to the final, amended version. COS at 2.

The contract specialist and the contracting officer received twenty proposals by the November 12 deadline for receipt of proposals; Versa's proposal was not included in this group. COS at 1, 3. The evaluation period for part one proposals concluded on January 24, 2022, and the agency sent advisory notifications to the twenty offerors on January 26. *Id.* On February 8, a representative from Versa emailed the contracting officer and requested an update on its proposal for part one as Versa had yet to receive an advisory notification. AR, Tab 2.1, Versa Feb. 8 Email to Contracting Officer at 1. The contracting officer informed Versa the agency had not received its submission for part one. COS at 2.

Subsequently, the representative from Versa emailed the contracting officer a series of trace logs from its server, showing that it had, in fact, transmitted to the agency its proposal for part one prior to 12:00 p.m. on November 12. AR, Tab 2.6, Versa Trace Logs at 1. The contracting officer contacted the agency's information technology (IT) department to verify whether the agency received any submission from Versa; the IT department responded that they had received nothing in the past week, but were still investigating the earlier periods. COS at 2. On February 14, Versa filed this protest with our Office. *Id.* On February 18, the contracting officer was advised that the agency had received Versa's part one proposal via email, but the email was then quarantined by the agency's server.³ *Id.* Specifically, the agency's event log shows the agency's server received Versa's proposal prior to the deadline, but its proposal was quarantined because the email contained macro files that "generally contain malicious code or computer viruses" and are "harmful to IT environments." AR, Tab 3.4, Email from Agency IT Department at 1; AR, Tab 3.5, Agency Event Log at 1. Thus, the proposal did not reach the contract specialist or the contracting officer by the November 12 deadline.

DISCUSSION

Versa contends the agency's rejection of its proposal as late was unreasonable because Versa submitted its proposal prior to the deadline, and the agency was in control of its proposal following that submission. Protest at 6-8. For the reasons discussed below, we deny the protest.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR provision 52.212-1(f)(1); *Washingtonian Coach Corp.*, B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4. Here, the RFP, through its incorporation of FAR provision 52.212-1, provided that proposals not received by the contracting officer and contracting specialist by the exact time specified would be "late" and would not be evaluated. RFP at 82. With respect to electronically submitted proposals, FAR provision 52.212-1(f)(2)(i)(A) prohibits the agency from accepting a late proposal unless (1) the contracting officer determines accepting the proposal would not unduly delay the

³ The agency's server received, and simultaneously quarantined, Versa's proposal at 11:32 a.m. EST on November 12, 2021. AR, Tab 3.5, Agency Quarantine Log at 1.

acquisition, and (2) the agency received the proposal at the initial point of entry not later than 5:00 p.m. one working day prior to the date specified for receipt of offers. Because Versa's proposal was not received by 5:00 p.m. one working day prior to the deadline, the agency properly rejected its proposal.

Rather than relying on the exception in FAR provision 52.212-1(f)(2)(i)(A), Versa instead argues the agency should have accepted its proposal under FAR provision 52.212-1(f)(2)(i)(B) because (1) there is no risk of undue delay given that the procurement is already delayed during pendency of the current protest, and (2) its proposal was received by the agency's server, and was therefore under government control, prior to the time set for the receipt of proposals.⁴ Comments at 1-5. In other words, Versa argues that its proposal should have been accepted as timely because the agency had control of its proposal following the submission. Comments at 4.

Our Office has previously addressed this very issue in *Sea Box, Inc.*, B-291056, Oct. 31, 2002, 2002 CPD ¶ 181, and we concluded that FAR provision 52.212-1(f)(2)(i)(B) does not apply to quotations that are submitted electronically. Since that time, we have continued to follow this interpretation of FAR provision 52.212-1. See *Peers Health*, B-413557.3, Mar. 16, 2017, 2017 CPD ¶ 93 (confirming our view that FAR provision 52.212-1(f)(2)(i)(B) does not apply to proposals submitted electronically). Although Versa recognizes our view as incorporated in our decisions, it requests that we use this case as an opportunity to modify it. Comments at 4.

We decline Versa's request to overturn our prior decisions. As we noted in *Sea Box*, FAR provision 52.212-1(f)(2)(i)(A) applies, by its express terms, when a proposal has been submitted by an electronic commerce method, and permits such a late proposal to be considered for award only if it was received at the initial point of entry to the government infrastructure no later than 5:00 p.m. the preceding working day. If we were to view late electronically transmitted proposals as eligible to be considered for award under FAR provision 52.212-1(f)(2)(i)(B), regardless of whether they were received at the initial point of entry by the preceding working day, such a view would effectively render FAR provision 52.212-1(f)(2)(i)(A) a nullity. In that situation, a proposal rejected under FAR provision 52.212-1(f)(2)(i)(A) could be considered under FAR provision 52.212-1(f)(2)(i)(B), a result we do not believe was intended. Moreover, as we noted in *Sea Box*, such an interpretation would be inconsistent with the

⁴ We do not address Versa's argument that accepting its proposal would not unduly delay this procurement because the record shows, and Versa does not dispute, that its proposal was not received by 5:00 p.m. at least one working day before the deadline for part one submissions.

fundamental principle that statutes and regulations must be read and interpreted as a whole, thereby giving effect to all provisions.

The protest is denied.

Edda Emmanuelli Perez
General Counsel