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Decision

Matter of: NAG Marine

File: B-422899

Date: December 12, 2024

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DIGEST

Protest challenging agency's decision to reject the protester's proposal as late is denied where the proposal was not timely received by the agency in a manner consistent with the terms of the solicitation and there is no evidence of systemic failure of the web-based tool authorized for electronic submission of proposals.

DECISION

NAG, LLC, doing business as NAG Marine of Norfolk, Virginia, protests its exclusion from consideration for award under request for proposals (RFP) No. N6449824R4016 issued by the Department of the Navy, Naval Warfare Center, for engineering and technical services required for repair station consoles. The protester contends that the agency should have accepted its proposal because the delay in submission was due to a system failure of the agency's web-based tool designated for electronic submission of proposals.

We deny the protest.

BACKGROUND

The Navy issued the solicitation on July 1, 2024, and sought proposals for the acquisition of "engineering and technical services required for the design, development, fabrication, test, repair, delivery and fleet implementation of Repair Station Console[s]"

(RSC).” Agency Report (AR), attach. 1, RFP at 2, 20;¹ Contracting Officer’s Statement (COS) at 3; Memorandum of Law (MOL) at 1. The RFP contemplated award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with resulting fixed-price task orders. RFP at 4.

The solicitation required proposals to be submitted electronically through the Department of Defense secure access file exchange (DOD SAFE).² RFP at 174-175. Proposals were due by 3:00 p.m. Eastern Time on August 26, 2024. *Id.* at 3. As relevant here, the RFP stated:

DoD SAFE supports individual file sizes up to 8GB. . . . When offers are submitted via DoD SAFE, the Government will receive an automated message stating that the file has been “Dropped-Off.” An offer uploaded (“Dropped-Off”) to DoD SAFE is considered to be timely when this automatic system-generated notification email is received by the designated Contracting Officer prior to the due date/time set for receipt of offers. Late submissions will be treated [in accordance with] [Federal Acquisition Regulation (FAR)] [provision] 52.212-1(f) or 52.215-1(c)(3)(ii)(A). . . . Offerors are reminded to be mindful of the due date/time set for receipt of offers.³

Id. at 174-175. The RFP included the website address for DOD SAFE as well as a link to a website that contained additional information on DOD SAFE. *Id.*

The RFP also included FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisition, which provided instructions for proposal submissions. *Id.* at 184-185. As relevant here, the provision provided that:

Any proposal, modification, or revision 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

¹ The agency report exhibits are contained within a single Adobe Acrobat PDF file and citations to the record reference the PDF document page numbers.

² DOD SAFE is a web-based tool, managed by the Defense Information Systems Agency (DISA), that provides users with authenticated DOD common access cards, and guests (unauthenticated users), the ability to securely send and receive large files, including files that are too large to be transmitted via email. *Frontier Technologies*, B-420878, Aug. 9, 2022, 2022 CPD ¶ 209 at 2 n.2; see DOD SAFE User Guide, available at <https://safe.apps.mil/help/dod-safe-help.xml> (last visited November 20, 2024).

³ The proposal submission instructions also recommended use of Firefox, Chrome, and Edge as the internet browsers to access DOD SAFE and cautioned offerors that the use of the Internet Explorer browser, which limited “uploads to 2GB” was not recommended. RFP at 175.

award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and –

- (1) 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 proposals; or
- (2) 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[]

Id. (quoting FAR provision 52.215-1(c)(3)(ii)(A)); MOL at 2-3; Comments at 9.

This provision also stated:

If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

Id. (quoting FAR provision 52.215-1(c)(3)(iv)); MOL at 6; Comments at 10.

As noted above, the RFP explained that when files are submitted via DOD SAFE, the recipient is notified via an automatic system-generated notification email. See RFP at 175. On August 26, The Navy received two automatic email notifications that recorded NAG Marine's proposal submission in two parts, the first drop-off confirmation included six files and recorded submission at 3:01:19 p.m. and completion at 3:06:10 p.m.⁴ MOL at 2; AR, attach. 5, DOD SAFE Notification Email at 215. The second automatic email notification contained two additional files and recorded drop-off submission at 3:11:50 p.m. and completion at 3:14:06 p.m.⁵ MOL at 2; AR, attach. 6, DOD SAFE Notification Email at 218.

On August 26, at 3:05 p.m., five minutes after the time set for receipt of proposals -- NAG Marine emailed the contracting officer and stated: "We've just uploaded our submission, but [it] keep[s] getting an error message. We will try again but want to confirm with you that we started this process about 30 minutes ago." COS at 5; AR,

⁴ Throughout the decision, all time references are to Eastern Time.

⁵ While the DOD SAFE automatic system-generated email notification recorded drop-off submission and completion times using coordinated universal time (UTC), in the pleadings the parties converted times to Eastern Time, which we adopt in our decision.

attach. 2, Email from NAG Marine to Agency at 205-206. On the same day, the contracting officer emailed NAG Marine and explained that it did not receive a proposal from NAG Marine by the proposal deadline, that none of the FAR exceptions regarding late submission of proposals applied, and therefore the agency could not accept NAG Marine's proposal. COS at 5; AR, attach. 2, Email from Agency to NAG Marine at 205. On September 5, NAG Marine timely filed this protest.

DISCUSSION

NAG Marine contends that its proposal should have been accepted by the government under FAR exceptions that apply when an offeror submits a proposal after the established deadline. Protest at 6; Comments at 5. The protester explains that it attempted to submit its proposal approximately 30 minutes before the deadline, that throughout the submission process it encountered upload terminations and an unresponsive webpage, and that after four attempts, its proposal was successfully submitted. See Protest at 4-5; Comments at 4. According to the protester, the government control exception to the late proposal submission rules applies to the facts here. Alternatively, the protester argues that the late submission of its proposal should be excused because the delay resulted from "problems with the government information technology system" and surmises that an "unanticipated event or fault with the government system [] disrupted normal processes."⁶ Protest at 6-7; Comments at 6-7.

The agency asserts that the protester failed to submit its proposal before the submission deadline, that no exceptions to the late proposal requirements applied, and the contracting officer's decision not to consider the protester's proposal was

⁶ The protester also raises other collateral arguments. While our decision does not specifically address every argument presented by the protester, we have considered them all and find that none provides a basis upon which to sustain the protest. For example, NAG Marine argues for the first time in its comments on the agency report that the agency had "superior knowledge" that DOD SAFE was faulty and should not have been utilized for proposal submissions. Comments at 2. The protester also contends that the DOD SAFE website itself warns that it should not be used for proposal submission. *Id.* The solicitation made clear that proposals would be submitted through the DOD SAFE website and therefore we dismiss the argument that the agency should not have used DOD SAFE for proposal submission as an untimely challenge to terms of the solicitation. 4 C.F.R. § 21.2(a)(1). Additionally, our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CORMAC Corp.*, B-421532, B-421532.2, June 14, 2023, 2023 CPD ¶ 142 at 4-5 n.8. We will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Id.* To the extent the protester asserts that it did not know about the warning on the DOD SAFE website prior to the deadline for submission of proposals, the protester still could have raised these arguments in its initial protest and therefore this also represents an improper piecemeal presentation of arguments.

reasonable and in accordance with solicitation requirements and FAR provision 52.215-1(c)(3)(ii)(A). Based on the record before us, we agree with the agency and find no basis to question its decision to reject NAG Marine's proposal as late.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR provision 52.215-1(c)(3); *Washingtonian Coach Corp.*, B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4. When transmitting a proposal electronically, it is an offeror's responsibility to submit its proposal sufficiently in advance of the time set for receipt of proposals to ensure proper delivery of the proposal and timely receipt by the agency. *SigNet Techs.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 4-5 (finding no evidence that system error frustrated protester's ability to submit a proposal where 12 other firms were able to successfully transmit timely proposals); *See, e.g., GSI Constr. Corp., Inc.*, B-418967, Oct. 28, 2020, 2020 CPD ¶ 334 at 5-6 (finding no evidence that a system error frustrated protester's ability to submit a proposal where four other firms were able to successfully transmit timely proposals).

As noted above, the solicitation explained that a proposal was considered timely when the agency's designated official received an "automatic system-generated notification email" by the solicitation deadline. RFP at 175. In this regard, the RFP included FAR provision 52.215-1, which states, in part, proposals not received by the contracting officer and contracting specialist by the exact time specified would be "late" and would not be evaluated. *Id.* at 184-185. Here, the second of the automatic notification emails associated with NAG Marine's proposal was not transmitted until 3:14 p.m. See MOL at 2; AR, attach. 5, DOD SAFE Notification Email at 215; AR, attach. 6, DOD SAFE Notification Email at 218. As a result, NAG Marine's full proposal was untimely submitted 14 minutes after the proposal deadline.

Late Proposal Exceptions

The protester argues that the FAR provision for "government control" applies and the agency should accept its proposal under that exception to the late proposal submission rules.⁷ See Protest at 6-7 (citing FAR provision 52.215-1(c)(3)(ii)(A)(2)); Comments at 6-7. Our Office has held that the government control exception does not apply to electronic submissions.⁸ See *ICS Nett, Inc.*, B-422575, July 24, 2024, 2024 CPD ¶ 168

⁷ Although NAG Marine does not argue that its proposal should be accepted under FAR 52.215-1(c)(3)(ii)(A)(1), because NAG Marine's proposal was not received by 5:00 p.m. one working day prior to the deadline, this exception would not apply. FAR provision 52.215-1(c)(3)(ii)(A)(1).

⁸ The protester asserts that our conclusion that the government control exception does not apply to electronic submissions is "predicated upon 'electronic submissions' in the form of emails or similar media" and that it therefore should apply here where proposal submission was done via a web-based platform. Comments at 9. That is not correct; we have found that this exception does not apply where proposal submission was done via a web-based platform, similar to DOD SAFE. See *ICS Nett, Inc.*, *supra* (concluding (continued...))

at 5-6; *see also Sea Box, Inc.*, B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 2-3 (if we were to view late electronically transmitted proposals as eligible to be considered for award under the government control exception, a late electronically submitted proposal rejected under FAR provision 52.215-1(c)(3)(ii)(A)(1) could nevertheless be considered timely under provision 52.215-1(c)(3)(ii)(A)(2), a result we do not believe was intended). Accordingly, this argument is denied.⁹

DOD SAFE Operation Status

As noted above, the protester also argues that the late submission of its proposal should be excused because, according to the protester, the delay was the result of systemic problems with the normal operation of the DOD SAFE tool. To investigate the facts related to protester's allegations and its attempts to submit its proposal, the agency contacted the DISA help desk and requested information concerning the operating status of DOD SAFE on the date that proposals were due. MOL at 7-8. In response, the help desk representative explained that DOD SAFE servers were operational on August 26 at 2:30 p.m. and during the 2:00 p.m. hour, and there were 2,000 drop-offs completed which was "in line with normal use." AR, attach. 9 Email from DISA Help Desk to Agency, dated Sept. 9, 2024, at 226; AR, attach. 10 Email from DISA Help Desk to Agency, dated Sept. 9, 2024, at 228. The representative stated that if there were "usability" issues, it was not caused by DOD SAFE. Consistent with this statement, the representative noted that a "large number of NAVY users" have reported "slow downloads and/or network issues" and "suspect[ed] there may be some NAVY network issues/congestion etc[etera] going on." AR, attach. 9, Email from DISA Help Desk to Agency, dated Sept. 9, 2024, at 226. The representative concluded that "[b]ottom line – [DOD SAFE] was available during the timeframe" the agency inquired about. AR, attach. 10, Email from DISA Help Desk to Agency, dated Sept. 9, 2024, at 228.

Separately, the agency contacted DOD SAFE, Special Services Line of Business unit to investigate. MOL at 7. The DISA system administrator who is responsible for managing the DOD SAFE application and servers also confirmed that DOD SAFE was available between 1:00 p.m. to 4:00 p.m., there were no instances of the application being unavailable on August 26, and that the "drop-off completed" submission time is when files are available for recipient pick-up. AR, attach. 11, Decl. of DISA System

government control exception does not apply where proposal submission done via a cloud-based platform and not email).

⁹ Further, even if the government control exception applied to the electronic method of transmission used by the agency, the exception would not apply to the facts here. There is no credible evidence to establish that the protester's proposal was in fact under the government's control prior to 3:00 p.m., the time set for receipt of proposals. Rather, the record reflects that the protester's recorded submission of its first drop-off confirmation did not commence until 3:01:19 p.m. MOL at 2; AR, attach. 5, DOD SAFE Notification Email at 215.

Administrator at 230. The agency, with confirmation from two representatives from DISA, determined there were no DOD SAFE network outages on the proposal submission due date and as the recipient, it would not have access to proposal files until drop-off completion. MOL at 7-8. In this regard, because the agency was unable to access NAG Marine's full proposal until 3:14 p.m.; it considered protester's proposal as a late submission in accordance with proposal instructions. *Id.*; RFP at 175.

Based on the record before us, NAG Marine has not demonstrated that a disruption to "normal processes" has occurred as it relates to the DOD SAFE site. See Protest at 4; Comments at 11. The agency has demonstrated that DOD SAFE was operational during the timeframe that NAG Marine was attempting to submit its proposal. In this regard, DISA representatives have confirmed the operability of DOD SAFE and drop-off completions during the period in question as normal, and NAG Marine has not demonstrated government fault.¹⁰ Further, the Navy received two timely proposals via DOD SAFE, one of which was received on August 26 at 2:50 p.m., ten minutes before the proposal deadline. MOL at 8. A finding by our Office of a systemic failure of an online government portal requires more than occasional malfunctioning of the system. See *Federal Acquisition Servs. Team, LLC*, B-410466, Dec. 31, 2014, 2015 CPD ¶ 20 at 4 (no systemic failure where all offerors that diligently pursued submission of their proposals were eventually successful, and the agency received 15 timely proposals). On these facts, there is no basis to conclude that DOD SAFE experienced a "system failure" during the period in question. As a result, we have no basis to sustain this protest ground.

The protest is denied.

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General Counsel

¹⁰ NAG Marine contends that the DISA help desk representative's comments regarding Navy users' claims of slow downloads or network issues "suggests that DoD SAFE was having operating issues during the relevant period." See Comments at 11. However, the DISA representative explained that he suspected these problems were the result of Navy network issues and that if there was a usability issue experience by someone, "it would not have been from DOD-SAFE." AR, attach. 9 Email from DISA Help Desk to Agency, dated Sept. 9, 2024, at 226. NAG Marine does not claim that it was using a Navy network to access DOD SAFE or otherwise demonstrate how any problems Navy users may have had showed there was a disruption to DOD SAFE.