



Decision

Matter of: Sector One Security Solution

File: B-400728

Date: December 10, 2008

Kenneth L. Sanford, Sector One Security Solution, for the protester.
David B. Dempsey, Esq., Jessica M. Madon, Esq., and Megan M. Mocho, Esq., Holland & Knight LLP, for Four Winds Services, Inc., an intervenor.
Dennis J. Gallagher, Esq., Department of State, for the agency.
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency improperly refused to consider its proposal is denied where there is no evidence that the agency received the proposal by the solicitation due date or that improper government action caused the failure of the postal service to make timely delivery, and where the record shows that the protester failed to follow the delivery instructions in the solicitation.

DECISION

Sector One Security Solution, of Franklin, Virginia, protests the rejection as late of its proposal submitted in response to request for proposals (RFP) No. SAQMMA08R0237, issued by the Department of State (DOS) for the acquisition of support services to DOS Peacekeeping Operations in Africa. Sector One argues that the agency should have accepted its proposal because the protester sent it by United States Postal Service (USPS) Express Mail and because the protester believes the USPS carrier attempted to deliver the proposal prior to the closing time for receipt.

We deny the protest.

The RFP was published in FedBizOpps on June 27, 2008, and contemplated multiple awards of indefinite-delivery/indefinite-quantity contracts to provide these support services for a base period with four 1-year option periods. The RFP, as amended, informed offerors to submit their proposals by 3 p.m. local time on September 11, 2008, at the following address:

Mail to:
U.S. Department of State
ATTN: Michael Larson
Office of Acquisition Management
P.O. Box 9115
Arlington, VA 22219

Or Hand-Carried to (offeror must pre-coordinate drop-off with the Contracting Officer): 1701 N. Ft. Myer Drive (Rosslyn Station), SA-6
Arlington, VA 22209

RFP § L.15, RFP amend. 6, at 1.

The RFP also incorporated Federal Acquisition Regulation (FAR) § 52.215-1, which provides that late proposals generally will not be considered for award if they do not reach the designated government office by the time specified in the solicitation.

Sector One used USPS Express Mail to send its proposal to the address in the RFP for hand-carried submissions. The agency reports that the USPS does not deliver mail to office annex buildings of the DOS, such as the one in which the Office of Acquisition is located. Agency Report (AR) at 5. For this reason, the RFP provided a post office box address for mailing and required that any hand-carried proposal be coordinated with the contracting officer.

Sector One's proposal was returned to it unopened with a notation that it was refused; the protester subsequently contacted the agency and claims it was advised that the proposal was returned because it had been misaddressed. However, the agency reports that it never received Sector One's proposal. AR, Tab 9, Contract Specialist October 21, 2008 email.

Sector One asserts that it sent its proposal by express mail to the address in the RFP for hand-delivery or courier. The protester has provided the USPS Express Mail label from the package indicating that it had the correct hand-carried address provided by the RFP and that USPS made two attempts to deliver the package, one of which was after the date and time for submission of proposals. The protester argues that express mail is delivered by courier and that someone at the agency marked "refused" in the employee signature box.

It is the responsibility of each firm to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the submission. Sencland CDC Enters., B-252796, B-252797, July 19, 1993, 93-2 CPD ¶ 36 at 3. Where late receipt results from the failure of a vendor to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late offer may not be considered. Aztec Dev. Co., B-256905, July 28, 1994, 94-2 CPD ¶ 48 at 3. An offer that arrives late may only be considered if it is shown that the paramount reason for late receipt was improper government action, and where 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.

As an initial matter, the agency denies receiving or rejecting the Sector One proposal submission that was the subject of the alleged delivery attempt by the USPS carrier. As explained above, since USPS does not deliver mail to the building where the Office of Acquisition is located, the RFP contained a P.O. box for mailed proposals, and allowed for hand-carried proposals provided delivery was coordinated with the contracting officer. By its own admission, the protester did not follow the instructions in the RFP for submission of its proposal in that it made no arrangements with the contracting officer for hand-carried delivery.

In our view, the evidence submitted by the protester does not establish that the agency actually received the protester's submission or that there was an attempt to deliver the proposals to the agency before the closing time established in the solicitation. As explained above, the record here, at best, only demonstrates that the USPS carrier attempted to deliver the protester's submission to some DOS location and does not specifically demonstrate whether anyone at DOS refused to accept delivery. The record shows that the paramount reason for the nonreceipt of the protester's submission is the protester's failure to follow the solicitation instructions to either mail its proposal to the designated P.O. box number or make the proper arrangements for hand-carried delivery. In short, there is nothing in the record showing that any affirmative government action deprived the protester of the ability to make a proper delivery of its proposal.

The protest is denied.

Gary L. Kepplinger
General Counsel