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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: B&S Transport, Inc.

File: B-407589

Date: December 27, 2012

Irvin N. Jackson, for the protester.

MAJ Andrew Smith, Department of the Army, for the agency.

Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was not obligated to consider vendor's quote where the record shows that the agency did not receive written verification of information related to the quote and the vendor was advised that failure to respond would constitute withdrawal of quote.

DECISION

B&S Transport, Inc., of North Canton, Ohio, protests the Department of the Army's award of a contract to McKnight Tire Company, of Jefferson City, Missouri, under request for quotation (RFQ) No. W911S7-12-T-0108, for high performance tires in support of the evasive driving course at Fort Leonard Wood in Missouri.

We deny the protest.

BACKGROUND

The Army issued the RFQ for the tires on August 30, 2012, as a small business set-aside under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation Part 12 and 13. RFQ at 1; Contracting Officer's (CO) Statement at 3. The solicitation contemplated the award of a fixed-price requirements contract with a 12-month period of performance. RFQ at 3-4, 6. Vendors were informed that the contract would be awarded on a lowest-price, technically acceptable basis. Id. at 14.

Six vendors submitted quotes prior to the RFQ's September 12 deadline. CO Statement at 3. According to the contracting officer, the three lowest quotes--including B&S's--"appeared unreasonably low" when compared to the independent

government cost estimate (IGCE). Id. In this regard, the IGCE was \$91,980; the lowest quote was \$73,131; the second lowest quote, B&S's, was \$73,465; and the third lowest quote, the awardee's, was \$80,000. Id.

To confirm that the low prices were not "the result of a mistake," a contract specialist sought to verify information from the vendors regarding their quotes.¹ Id. After contacting the vendor that submitted the lowest-priced quote, the agency determined that the tire quoted "did not meet the agency's needs" and the quote was rejected. Id. Next, the contract specialist emailed the president of B&S on Friday, September 21, at 9:12 a.m. (CST) to verify information regarding its quote.² Agency Report (AR), exh. 3, Email to B&S Seeking Quote Verification, at 1. The agency explains that after not receiving a response from B&S, the contract specialist sent a second email to B&S's president a few hours later at 12:45 p.m. (CST) on September 21. AR, exh. 4, Email to B&S Seeking Quote Verification, at 1. In the email, the contract specialist included the initial verification inquiry and instructed B&S's president to "Please answer the questions below." Id.

The agency reports that by Monday morning, September 24, the contract specialist still had not received a response from B&S to the agency's emails to verify quote information. AR at 3. Therefore, the specialist emailed the president of B&S a third time at 1:00 p.m. (CST) on September 24. In the email, the specialist forwarded his previous two messages and explained, "I need [an] answer to the questions below by 3:00PM this afternoon 24 September 2012. Failure to reply will constitute a withdrawal of your quote." AR, exh. 6, Email to B&S Seeking Quote Verification, at 1. The contract specialist also spoke with B&S representatives on the telephone and stated that the agency needed written responses to the agency's inquiry by 3:00 p.m. AR, exh. 5, Note Regarding Telephone Conversation with B&S, at 1.

The agency explains that the contract specialist did not receive a written response from B&S prior to the 3:00 p.m. deadline. CO Statement at 4. As a result, the specialist sought email verification from the vendor that submitted the third lowest quote, McKnight. Id.; AR, exh. 7, Email Correspondence with McKnight, at 1. After receiving a response within an hour from McKnight in which the firm verified in writing the requested information, the agency awarded the contract to McKnight.

¹ The Army also explains that verification was necessary because the agency had previous problems with post-award orders for high performance tires. CO Statement at 3.

² Specifically, the contract specialist sought confirmation of the following five items: that the quote included shipping charges; that the vendor understood a requirements contract would be awarded; that payment would be made by credit card; that delivery could be made within 14 days; and that the tire was the type described in the RFQ. AR, exh. 3, Email to B&S Seeking Quote Verification, at 1.

AR, exh. 7, Email Correspondence with McKnight, at 1; CO Statement at 4. This protest followed.

DISCUSSION

In its protest, B&S asserts that it timely verified the information in its quote via email. Protest at 2. In support of its assertion, the protester submitted an email chain that includes a message, allegedly sent at 2:54 p.m. (EST) on September 24, from B&S's president to the Army contract specialist in which B&S verifies the requested information about the firm's quote. Protest, attach. 1, Email Correspondence, at 3-4.

When using simplified acquisition procedures, agencies must promote competition "to the maximum extent practicable." 10 U.S.C. § 2304(g)(3) (2012). In meeting this requirement, agencies must make reasonable efforts, consistent with efficiency and economy, to afford all eligible and interested vendors an opportunity to compete. S.D.M. Supply, Inc., B-271492, June 26, 1996, 96-1 CPD ¶ 288 at 4. Agencies have a fundamental obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations received and to give them fair consideration. Id. However, as a practical matter, even with appropriate procedures in place, an agency may lose or misplace a bid or quotation, and the occasional loss of a bid or quotation—even if through the negligence of the agency—generally does not entitle the bidder or vendor to relief. Id.; Interstate Diesel Serv., Inc., B-244842.2, Sept. 27, 1991, 91-2 CPD ¶ 304 at 2. Indeed, we have found an agency's rejection of a quote to be reasonable where a protester emailed its quote to the agency, but the record showed that the agency never actually received the emailed submission prior to the deadline. See Turner Consulting Group, Inc., B-400421, Oct. 29, 2008, 2008 CPD ¶ 198 at 4.

The circumstances here do not provide a basis to sustain the protest. In this regard, the agency contends that it never received any email verification from B&S, and, consequently, it considered the quote to have been withdrawn. AR at 6. The record shows that the agency's information technology (IT) staff conducted an email trace of all email messages the agency received from B&S's president on September 24. Agency Memorandum for the Record at 1-2. The results of the agency's search confirm that the Army never received the email B&S contends its president sent to the contract specialist. Id., attach. 6, Email from IT Staff to Contract Specialist, at 1.

Although the protester has presented evidence that it timely sent an email verifying information about its quote, there is no question that the agency did not receive B&S's email verification prior to the contract specialist's deadline. Moreover, the agency sent the protester multiple emails seeking a response, and the agency advised the protester in writing and on the telephone that the agency would consider B&S to have withdrawn its quote if it failed to provide written answers to

the agency's questions. Additionally, the record does not show that B&S took any steps to confirm that its email message was received.

In short, given that there is no evidence in the record to show actual timely receipt of B&S's verification email, we have no basis to find unreasonable the agency's decision not to award a contract to B&S.³ See Turner Consulting Group, Inc., *supra*, at 4; Int'l Garment Processors, B-299674, B-299743, B-299746, July 17, 2007, 2007 CPD ¶ 130 at 7 (agency's rejection of revised quote was reasonable where protester only demonstrated that quote was transmitted, but not that it was actually timely received by the agency); see also Lakeshore Eng'g Serv., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4 (elimination from competitive range found reasonable where protester did not show that its proposal was successfully delivered to agency's email box prior to submission deadline); Am. Material Handling, Inc., B-281556, Feb. 24, 1999, 99-1 CPD ¶ 46 at 3-4 (agency not required to consider vendor's quote where agency lost quote due to agency computer malfunction).

The protest is denied.

Susan A. Poling
General Counsel

³ In its November 5 Response to the Agency's Motion to Dismiss, B&S argues for the first time that the Army's attempt to verify information was not "standard procurement practice" because the vendors were questioned serially, rather than simultaneously. Response to Motion to Dismiss at 2. We disagree and see nothing improper about the agency's approach of first questioning the lowest-priced vendor, then the second, then the third, in order to verify their prices and capabilities. In later filings the protester alleges that the questions and answers exchanged between the contract specialist and the awardee were an "afterthought . . . to justify contract award to a higher bidder." Supplemental Comments at 1. While we reiterate that we see nothing improper in these exchanges, these later allegations are untimely because they were filed more than 10 days after the protester knew or should have known the basis of protest; accordingly they will not be considered. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2012); see also Recreation Res. Mgmt. of Am., Inc., B-406072, Feb. 1, 2012, 2012 CPD ¶ 60 at 6.