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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Symetrics Industries, LLC

File: B-298759

Date: October 16, 2006

Edward J. Kinberg, Esq., Kinberg & Associates, LLC, for the protester.
Maj. Kevin Wilkinson, Department of the Air Force, for the agency.
Nora K. Doolin, Esq., and James Spangenberg, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

A proposal revision submitted to the contracting officer's e-mail address as provided for by the agency but after the deadline established for receipt of proposal revisions cannot be accepted under Federal Acquisition Regulation § 52.215-1(c)(3)—which states the circumstances where late proposals or proposal revisions can be considered—even though the proposal revision was received prior to the deadline by the government server at the initial point of entry that serviced the e-mail address.

DECISION

Symetrics Industries, LLC protests the rejection of its final proposal revision (FPR) as late under request for proposals (RFP) No. FA8523-06-R-80414, issued by the Department of the Air Force to acquire AN/ALE-47 Countermeasures Dispensing System.

We deny the protest.

After initial proposals were received and evaluated and discussions conducted, on August 18, 2006, the Air Force issued a request for FPR to the competitive range offerors that pointed to various items that should be reviewed before the FPRs were submitted and provided that the FPRs could be transmitted electronically by sending them to the e-mail address of the contracting officer. This request also stated:

The final proposal revision must be received in this office no later than 3:00 PM EST, 23 August 2006. A revision received after this time will be considered a late revision or modification in accordance with RFP Provision, [Federal Acquisition Regulation (FAR) §] 52.215-1,

Instructions to Offerors-Competitive Acquisition and will not be considered. If a final proposal revision is not received by the cut-off date, the offeror's current offer, reflecting any clarifications or revisions to date, will be evaluated as the final proposal revision.

Protest, attach. A. FAR § 52.215-1(c)(3) in relevant part provides:

(3) Submission, modification, revision, and withdrawal of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) 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 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; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

On August 23, 2006, Symetrics transmitted its FPR electronically to the contracting officer's e-mail address.¹ At 2:58 p.m., the president of Symetrics phoned the contracting officer to notify her that Symetrics had submitted its FPR. Protest, Symetrics' President's Affidavit. The contracting officer received the e-mail while on the phone with Symetrics' president and told him that it was received at 3:01 p.m., according to her computer. The e-mail, according to the contracting officer's computer, showed the e-mail message forwarding the FPR was sent at 2:54 p.m. Agency Report, attach. 2, Declaration of Contracting Officer.

Symetrics' computer mail server records evidence that at 14:55:42 p.m. Symetrics commenced transmission, at 14:55:44 p.m. the intended recipient was identified and located, at 14:58:30 p.m. Symetrics' transmission to the destination was identified as complete, and finally at 14:58:31 p.m. Symetrics' mail server returned the following message: "SMTP session successful." Protest, exh. B, Affidavit of Information Technology Specialist Contracted by Symetrics; attach.

The Government's e-mail relay report showed Symetrics' FPR was accepted at the server at Wright-Patterson Air Force Base, Ohio at 2:57:41 p.m. and delivered to the contracting officer's e-mail box at 3:01:00 p.m., and that the process was completed at 3:01:00 p.m.² Agency Supplemental Report, Declaration of Computer System Analyst; Agency Report, attach. 2A, E-mail Relay Report.

Symetrics argues that the rejection of its FPR was unreasonable because it was within the control of the government by the deadline for receipt of FPRs. However, a late proposal revision submitted electronically may only be accepted if one of the

¹ The protester contends that it was prejudiced by ambiguities in the instructions for submission of the FPR in that the request for FPRs stated both "The final proposal revision must be received in this office no later than 3:00 PM EST, 23 August 2006" and "[T]he submission may be accomplished electronically by sending it to [the Contracting Officer's email address]." Protest, attach. A. These instructions could not be said to be prejudicially confusing to the protester inasmuch as Symetrics in fact e-mailed its FPR to the designated e-mail address (albeit that it was received late) and did not otherwise attempt to deliver its FPR to the contracting office.

² The protester argues that as a "matter of science" there must be some time gap between the Government server's queuing of the e-mail for delivery to the contracting officer's account and the report of delivery at 3:01:00 p.m. As such, the protester argues, if the Government's server reported delivery at 3:01:00 p.m., delivery must have been completed prior to that time. However, we regard the government's e-mail relay report as the best evidence of when the e-mail was received at the contracting officer's e-mail address and the protester has not shown that the government's computer records, which were consistent with the contracting officer's contemporaneous account indicating receipt at 3:01 p.m., are not accurate.

exceptions contained in FAR § 52.215-1(c)(3) is applicable. See Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181.

Under the first exception to FAR § 52.215-1(c)(3), a late proposal submitted via electronic means is late, unless accepting the late offer would not unduly delay the acquisition, and it was received at the initial point of entry to the Government infrastructure not later than 5 p.m. 1 working day prior to the date specified for receipt of proposals. FAR § 52.215-1(c)(3)(ii)(A)(1). This exception does not apply, as Symetrics FPR was not submitted by 5 p.m. on August 22, 2006.

Our Office has previously determined that the second exception, FAR § 52.215-1(c)(3)(ii)(A)(2), which allows for consideration of proposals received at the Government installation designated for receipt of offers and under the Government's control prior to the time set for receipt of offers, is not applicable to electronic proposals. Sea Box, Inc., supra, at 3. Although not expressly stated in the regulation, we found that the second exception necessarily applies only to proposals delivered by other than electronic means. This is so because if the Government considered a late electronic proposal under the second exception, regardless of whether it was received by 5 p.m. the previous working day, the first exception would effectively be rendered meaningless.³ Id.

Since Symetric's FPR was not received in the e-mail mailbox of the contracting officer until 3:01:00 p.m., which was validated by the Government's e-mail relay report, the late proposal cannot be accepted. Id.

The protest is denied.

Gary L. Kepplinger
General Counsel

³ The third exception is likewise inapplicable as there was more than one proposal submitted. While Symetrics speculates that its proposal was the otherwise successful proposal so that its late FPR can be accepted, it has provided no evidence that this was the case. The fact that the agency evaluated Symetrics' proposal, without considering the FPR, after receipt of the FPRs does not evidence that it was the otherwise successful proposal, but was consistent with how the agency stated it would evaluate a proposal if the FPR was submitted late.