



Decision

Matter of: Cla-Val Company

File: B-418443

Date: May 13, 2020

Jeff R. Vogel, Esq., Cozen O'Connor, for the protester.
Howard B. Rein, Esq., Department of the Navy, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's hand-carried proposal as late is denied where the record does not establish that the protester's proposal was under government control prior to the deadline for receipt of proposals established in the solicitation.

DECISION

Griswold Industries, Co., doing business as Cla-Val Company, a small business of Costa Mesa, California, protests the rejection of its proposal by the Department of the Navy, Naval Surface Warfare Command (NSWC), under request for proposals (RFP) No. N64498-20-R-4001 for motor-operated pilot valves. The protester contends that the agency unreasonably rejected its proposal as late.

We deny the protest.

BACKGROUND

The solicitation, issued on December 4, 2019, contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract in accordance with Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Encl. 1, RFP at 1, 120, 124. The RFP provided for the issuance of delivery orders under the IDIQ for a period of 60 months after the date of award. *Id.* at 98.

The RFP established the deadline for receipt of proposals as 3:00 p.m., January 6, 2020. *Id.* at 1. The RFP here, in two places, identified two distinct addresses for the

receipt of proposals. *Id.* at 1, 114. The RFP expressly barred the use of email to submit proposals. *Id.* at 114.

In its first mention of an address, the RFP stated that “Sealed offers in original and 3 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand-carried, in the depository located [on the second floor of the building].” *Id.* at 1. Item 8 referred offerors to item 7, where the address was specified as:

NAVAL SURFACE WARFARE CENTER PHILA
CODE 0231, [JANE DOE]
215-897-2941, [JANE DOE]@NAVY.MIL
5001 SOUTH BROAD STREET
PHILADELPHIA PA 19112

RFP, Standard Form (SF) 33 at 1 (as in original).

In its second mention of an address, the RFP directed that proposals that “are to be delivered by mail,” should be sent to the following address:

Naval Surface Warfare Center Philadelphia
ATTN: [Jane Doe], Code 0231, Bldg. 4
1601 Langley Avenue, Building 542
Philadelphia, PA 19112.

RFP § L.2.2 at 114 (as in original). For ease of reference, the first address designated for the “receipt” of proposals, or for hand-delivered proposals, will be referred to as the “Broad Street” address. The address designated for proposals delivered by mail will be referred to as the “Langley Avenue” address.

The solicitation incorporated by reference FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisition (JAN 2017), which provides in relevant part:

- (3) Submission, modification, revision, and withdrawal of proposals.
 - (i) Offerors are responsible for submitting proposals [. . .] so as to reach the Government office designated in the solicitation by the time specified in the solicitation. [. . .]
 - (ii)(A) Any proposal [. . .] 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-

[. . .]

(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; [. . .]

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

FAR provision 52.215-1(c)(3); RFP at 119.

Cla-Val arranged for the delivery of its proposal by Federal Express (FedEx) to the Langley Avenue address (*i.e.*, the address specified for mailed proposals). Protest at 2; RFP § L.2.2. at 114. In its protest, Cla-Val produced a FedEx receipt stating that the proposal was delivered to the Langley Avenue address at 9:39 a.m. on January 6.¹ Protest, Exh. A, FedEx Delivery Confirmation.

The agency states that the Langley Avenue address Cla-Val used for delivery of its proposal is the Naval Surface Warfare Center, Philadelphia Division, Operating Materials and Supplies Warehouse (hereinafter referred to as "central receiving"). COS/MOL at 3. The agency explains that when FedEx or other commercial packages are delivered to the central receiving location, a single signature is provided for all of the packages in each delivery. Supp. Agency Briefing at 2. The packages are then placed on a pallet or cart, and in order to maintain control and tracking of each package received, the packages are individually logged into the agency's central database in the order received. COS/MOL at 3. The agency's centralized record keeping program, called Navy Enterprise Resource Planning, becomes the government's record of when each package is received and under government control. *Id.* The agency states that after each package is processed at central receiving, it is then scheduled for delivery to the addressee. *Id.*

The agency produced documentation that Cla-Val's proposal was logged in at its central receiving facility on January 7. AR, Encl. 2, Central Receiving's Manifest for Cla-Val's Proposal. Cla-Val's proposal was then delivered to the contract specialist on January 8 at 10:19 a.m. COS/MOL at 1; AR, Encl. 3, Central Receiving's Delivery Receipt for Cla-Val's Proposal (Jan. 8, 2020).

On January 22, the agency informed Cla-Val that its proposal had been rejected as late because it was received after the submission deadline. AR, Encl. 4, Agency Notice to Cla-Val of Late Proposal. This protest followed.

¹ The agency states that it does not receive or maintain the commercial carrier's receipt of delivery. Contracting Officer Statement and Memorandum of Law (COS/MOL) at 3.

DISCUSSION

Cla-Val argues that the agency improperly rejected its proposal as late. In this regard, the protester contends that its proposal was delivered by FedEx to the proper agency facility before the deadline for receipt of proposals. Protest at 3. The protester argues, in the alternative, that even if its proposal was delivered late, the agency should have considered the proposal because the delay was caused by improper government action. *Id.* Specifically, Cla-Val states that the delay by the agency's central receiving facility in delivering its proposal to the contract specialist was primarily due to the fact that the address in section L.2.2. of the solicitation (the Langley Avenue address) was incorrect. *Id.* at 4.

In response, the agency states that the Langley Avenue address in section L.2.2. of the solicitation--used by Cla-Val for the delivery of its proposal by FedEx--was designated in the solicitation for the delivery of mailed proposals. COS/MOL at 3. In addition, the agency explains that until a document is logged in to the agency's database as received, it is not under the government's control. Finally, the Navy contends that Cla-Val has not shown that it was misled by section L.2.2. of the solicitation, as the protester claims.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. *SigNet Technologies, Inc.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 4. However, a late hand-carried offer may be considered for award if the government's misdirection or improper action was the paramount cause of the late delivery and consideration of the offer would not compromise the integrity of the competitive process. *See, e.g., ALJUCAR, LLC*, B-401148, June 8, 2009, 2009 CPD ¶ 124 at 3; *Vizocom* B-418246.2, Feb. 14, 2020, 2020 CPD ¶ 72 at 4.

Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. *O.S. Systems, Inc.*, B-292827, Nov. 17, 2003, 2003 CPD ¶ 211 at 3. Nonetheless, even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not doing all it could or should have done to fulfill its responsibility. *ALJUCAR, LLC, supra; Vizocom, supra.* For the reasons discussed below, we find no basis upon which to sustain the protest.²

Late Receipt of Proposal

As a preliminary matter, we need not resolve the dispute between Cla-Val and the Navy over which address should have been used for a hand-delivered proposal. Instead, the dispute is only about whether the proposal was delivered on time. The hand-delivered

² Although we do not specifically address all of Cla-Val's allegations, we have fully considered all of them and find that none provide a basis on which to sustain the protest.

proposal was sent to the Langley Avenue address and was logged as received by the government the day after proposals were due. COS/MOL at 1. Cla-Val offers its FedEx receipt as proof that the proposal was delivered before the closing time set out in the solicitation; the Navy offers its log as proof that it was not received before the closing time. Protest, Exh. A, FedEx Delivery Confirmation; AR, Encl. 2, Central Receiving's Manifest for Cla-Val's Proposal. This, at essence, is the extent of the dispute about whether the proposal was late.³

The protester argues that its proposal was not late, as measured by the FedEx receipt, and was under the agency's control within the agency's central receiving facility. Protest at 4. As noted above, the RFP incorporated a FAR provision stating that a proposal received at the place designated for receipt of proposals may be accepted after a solicitation deadline, provided "[t]here is acceptable evidence to establish that it was received at the [g]overnment installation designated for receipt of offers and was under the [g]overnment's control prior to the time set for receipt of offers." FAR provision 52.215-1(c)(3)(ii)(A)(2); see also *B & S Transp., Inc.*, B-404648.3, Apr. 8, 2011, 2011 CPD ¶ 84 at 3 (explaining that a hand-delivered proposal must be physically relinquished to government personnel by the offeror or its agent to be considered placed under government control).

We have consistently stated that commercial carrier records, standing alone, do not serve to establish the time of delivery to the agency since they are not evidence of receipt maintained or confirmed by the agency. *Valenzuela Engineering, Inc.*, B-280984, Dec. 16, 1998, 98-2 CPD ¶ 145 at 3; *General Power Eng'g Assocs., Inc.*, B-292170, May 28, 2003, 2003 CPD ¶ 109 at 2-3. We also note that here, other than offering a receipt of delivery provided by FedEx, the protester has not produced any other evidence that the government received the proposal prior to the deadline, such as a declaration of the delivery person describing the circumstances of the delivery. In this regard, the protester has not presented any direct evidence, other than the FedEx

³ To the extent the protester asserts that the solicitation instructions were ambiguous and contained a latent inconsistency because it included two addresses; one for hand-delivered proposals and one for mail delivery, this protest ground is untimely. Protest at 3. Our Bid Protest Regulations contain strict rules for the timely submission of protests, and protests of alleged apparent solicitation improprieties must be filed prior to the closing time for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1). Since Cla-Val failed to challenge any ambiguity arising from the solicitation's inclusion of two separate addresses for delivery of proposals, such a protest ground is untimely. In any event, there is no evidence that FedEx's hand-delivery of the proposal to the Langley Avenue address caused the problem here. The protester has not argued that FedEx was unable to deliver at the Langley Avenue address; indeed, the protester argues that the delivery was completed several hours before the deadline for submitting proposals. Instead, the problem here is that the only evidence of timely delivery of the proposal is the receipt from the commercial delivery service.

receipt, to rebut the agency's documentation showing that the proposal was not received until January 7.

Cla-Val also argues that its proposal was received at the agency's central receiving department, but was not processed and delivered in a timely fashion, or in accordance with the facility's standard operating procedures (SOP). Comments at 2. The protester notes that section 2.1.2 of the facility's SOP for building 542 provides that all "[n]on-[m]aterial shipments (e.g. FEDEX, UPS, etc.) will be directly turned over to the owner, no further action required." NSW Central Receiving at Building 542 SOP at 5.

The agency responds that it followed its established procedures with regard to the delivery of Cla-Val's proposal by FedEx. As stated above, when FedEx or other commercial packages are delivered to the central receiving facility, a single signature is provided for all of the packages in each delivery, and then, in order to maintain control and tracking of each package, each package is individually catalogued into the agency's central database. Supp. Agency Briefing at 2.

The agency also produced additional documentary evidence to support its statements concerning the deliveries that were made to its central receiving facility from January 6 to January 8. *Id.*, Encl. 1, Central Receiving Manifest, Jan. 6-8, 2020. Specifically, the documentation listed all of the deliveries processed on these dates, to include an entry showing that Cla-Val's package was logged into the system on January 7, and then delivered to the contract specialist on January 8. *Id.* The agency points out that this documentation demonstrates that packages received within the timeframe of January 6-8 were delivered to seven different buildings on the agency campus. *Id.* We find that the agency's action in cataloging Cla-Val's package into its central database before its delivery to the contract specialist was consistent with the SOP in place at its central receiving facility.

Because we find no basis to question the agency's claim that it received Cla-Val's proposal on January 7, and we find that Cla-Val has failed to conclusively establish when its proposal was received, we cannot find that the proposal was received by the agency, or was under the government's control, prior to the RFP's deadline. We therefore find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel