

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

PROTEST OF:

HARRIS RESOURCES, PC)	
)	CAB No. P-0894
Solicitation No. DCRK-2011-R-0219)	

For the Protester: Mr. Curtis Harris, *pro se*. For the District of Columbia Government: Robert Schildkraut, Esq., Assistant Attorney General, Office of the Attorney General.

Opinion by Chief Administrative Judge Marc D. Loud, Sr., with Administrative Judge Maxine E. McBean, concurring.

OPINION

Filing ID #46901459

Harris Resources, PC (protester or Harris) failed to submit a bid on a solicitation issued by the D.C. Office of Contracting and Procurement (District) after allegedly encountering difficulties logging on and experiencing other delays with the District's online procurement message board. Harris thereafter filed a protest with the Board asserting that the District erred by not allowing it to file a late proposal. The District filed an unopposed motion to dismiss on jurisdictional grounds. We find that the protester does not meet the lawful requirements for submission of a late proposal and dismiss this matter with prejudice.

BACKGROUND

In pertinent part, the record herein reveals that the District issued Request for Proposals No. DCRK-2011-R-0219 on the District's Ariba Spin Manage Website (Ariba) on September 1, 2011, for actuarial services related to worker's compensation and tort liability claims. (District's Combined Mot. to Dismiss and Agency Report (hereafter Mot. To Dismiss), Ex. 2, §B.1., Ex. 4, ¶4.) The solicitation identified September 15, 2011, at 2:00 *p.m.* as the submission deadline. (Mot. To Dismiss, Ex. 4, ¶4.) The District later changed the submission deadline to September 15, 2011, at 4:00 *p.m.* (Mot. To Dismiss Ex. 4, ¶9.) The protester requested that the deadline be changed to September 15, 2011, at 5:00 *p.m.*, but the District denied the request. (Protest 2.) The protester does not dispute that it failed to submit a timely proposal to the solicitation¹. (Protest 1-2.)

The two-page *pro se* protest submitted herein lacks a coherent narrative of protest grounds, and is replete with factual discrepancies. For example, there are internal contradictions

¹ The protester concedes that it was "unable to get our submission in before the deadline" and that the District "closed the bid just minutes before we were ready to submit". (Protest 1-2.)

between key dates referenced in the protest,² solicitation provisions cited therein,³ and arguments advanced to support the protest.⁴ Notwithstanding those inherent deficiencies, the Board discerns that the protester is seeking to link its failure to submit a timely bid to three factors allegedly caused by the District.

First, the protester contends that the District's Ariba system prevented the protester from logging on until six days after the solicitation was issued. (Protest 1, ¶2.) The solicitation was issued on September 1, 2011, and the protester contends that it was not able to logon to Ariba until September 7, 2011.⁵ (*Id.*) By implication then (although not stated expressly), the protester apparently contends that it was prejudiced by the truncated period within which it was forced to prepare a proposal.

Second, the protester contends that the District failed to issue responses to its solicitation questions until the day that proposals were due from all bidders. (Protest 2, ¶2.) In this regard, the record shows that the protester emailed questions to the District on September 13, 2011. (Protest 2; Mot. to Dismiss Ex. 4, ¶6, Ex. 5.) The protester emailed the District two additional questions on September 14, 2011. (Protest 2; Mot. to Dismiss Ex. 5.) The protester contends that it did not receive answers to its first set of questions until September 15, 2011, when the District issued Amendment Two⁶ containing said answers. (Protest 2; Mot. to Dismiss Exs. 3, 4 ¶8.) The District contends that it sent an email to the protester containing answers to the questions on September 14, 2011, which the protester contends it never received. (Mot. to Dismiss Ex. 4, ¶7, Ex. 5; Protest 2.) The protester contends that the District should have extended the deadline for bid submission to 5:00 p.m. to "allow us to incorporate the required changes to our submission." (Protest 2.)

Lastly, the protester appears to contend that the District violated §L.6 of the solicitation by (1) failing to "promptly answer" bidder questions on the Ariba message board, and (2) allowing a competing bidder to submit solicitation questions within nine days of the closing date. (Protest 1.) In this regard, the protester merely repeats its above argument regarding the District's alleged delay in posting responses on the Ariba message board to the protester's September 13 questions. Separately, however, the protester also appears to argue that ambiguous solicitation language resulted in the protester not submitting solicitation questions until two days before the closing date. It appears (although not expressly stated) that the protester is arguing that but for §L.6's alleged ambiguous language, the protester would have submitted its questions

² For example, the protester contends that it "requested that the due date time be extended to 5:00 p.m." on September 20, but on the same page states that it "requested a two-hour extension" on September 15, 2011. (Protest 2.)

³ For example, the protester refers to solicitation §L.6 as containing a requirement to promptly post all bid questions on the Ariba website, but later refers to §L.16 as containing the requirement. (Protest 1-2.)

⁴ For example, the protester contends that it believed the submission deadline was 2 p.m. and "closed just minutes before we were ready to submit". (Protest 2.) However, the actual submission deadline was 4:00 p.m. and protester's proposal would have been timely had it been submitted "just minutes" after 2:00 p.m. (Mot. to Dismiss Ex. 4, ¶9.)

⁵ On September 7, 2011, Harris sent an email to the OCP Help Desk requesting assistance with registering, and received an invitation to participate in the procurement. (Mot. to Dismiss Ex. 5.) Later that same day, the protester emailed the solicitation's contract specialist stating that the problem had been solved. (*Id.*)

⁶ Neither the questions presented nor the responses given by the District in Amendment Two are germane herein because we find that the protester does not meet the requirement to submit a late proposal.

prior to September 13 and have had sufficient time thereafter to incorporate any needed changes into a timely final proposal to the District. (Protest 2.)

The District has filed an unopposed motion to dismiss.⁷ First, the District argues that, consistent with his broad discretionary authority, the contracting officer herein was under no duty to extend the submission deadline to 5:00 p.m. (Mot. to Dismiss 9.) Second, the District argues that the remaining protest grounds asserted by Harris are untimely because Harris knew of the alleged improprieties regarding logon difficulties, ambiguous solicitation language, and delayed message board posts prior to the time set for receipt of proposals, but filed its protest beyond the permissible time-period stated in D.C. Mun. Regs. tit. 27, §302.2(a) (2002). (Mot. to Dismiss 4.)

DISCUSSION

The Board exercises jurisdiction over this protest pursuant to D.C. CODE §2-360.03(a)(1) (2011).

The threshold issue presented for the Board's consideration is whether the District erred by not allowing the protester to submit a late proposal following the alleged failure of the Ariba system to function properly. The pertinent regulations regarding submission of late proposals are found at D.C. Mun. Regs. tit. 27, §1609 *et seq.* and provides:

27-1609. LATE PROPOSALS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

1609.3 Proposals and modifications to proposals that are received in the designated District office after the exact time specified in the RFP . . . are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) calendar day before the date specified for receipt of offers;
- (b) The proposal or modification was sent by mail and it is determined by the contracting officer that the late receipt at the location specified in the RFP was caused by mishandling by the District after receipt; or
- (c) The proposal is the only proposal received.

In the instant matter, neither the Board nor the contracting officer can authorize the untimely submission of protester's proposal unless the requirements of the above regulation are

⁷ The District also filed a Determination and Findings to Proceed with Contract Award While a Protest is Pending (D&F to Proceed). The protester did not challenge the District's D&F under D.C. Mun. Regs. tit. 27, §304.4 (2002). The protester also failed to file Comments to the District's Agency Report under D.C. Mun. Regs. tit. 27, §307 (2002). The protester's failure to oppose the District's motion to dismiss, file Comments to the Agency Report, and challenge the District's D&F suggests that the protester may have abandoned its protest. The Board is authorized to treat an unopposed motion as conceded under D.C. Mun. Regs. tit. 27, §110.5 (2002). Further, where a protester fails to file Comments to the Agency Report, the Board may dismiss the matter and/or treat as conceded facts not otherwise contradicted by the protest or documents in the record. D.C. Mun. Regs. tit. 27, §§307.3, 307.4 (2002).

met. See, e.g., *Protest of Wallace C. Wilson*, CAB No. P-0484, 44 D.C. Reg. 6879 (August 4, 1997); *Protest of Planning and Development Intern, Inc.*, CAB No. P-0336, 41 D.C. Reg. 3491 (June 22, 1993). In this case, the protester has not met any of the requirements of the rule regarding late proposals. In particular, a late proposal can only be considered if, at a minimum, it was received *before* contract award. In this case, the protester has conceded that it did not submit a proposal.

In addition, it was not an abuse of discretion for the District to refuse to extend the deadline herein to 5:00 p.m. as requested by the protester. There is every indication from this record that the problems that the protester allegedly experienced with the Ariba system might very well have been user error. For example, the contracting officer noted that the protester “was unable to review the Solicitation on the Ariba system until September 7, 2011, because Harris had originally provided Ariba with an incorrect email address.” (Mot. to Dismiss, Ex. 4, ¶11.⁸) It was not an abuse of discretion for the contracting officer to refuse to extend the submission deadline solely to accommodate an offeror whose own errors may have been responsible for its inability to make the initial deadline.

Notwithstanding the contracting officer’s refusal to extend the deadline to 5:00 p.m., the contracting officer did extend the submission deadline to 4:00 p.m. (Mot. to Dismiss, Ex. 4, ¶12.) Notice of the two-hour extension was posted for all to see on the Ariba website on September 15 at the same time that Amendment Two was posted. (Mot. to Dismiss, Ex. 4, ¶13.) A contracting officer’s refusal to extend a closing date is appropriate unless the record supports a finding that her decision is arbitrary and capricious. *Protest of Wallace C. Wilson*, 44 D.C. Reg. at 6881. The record herein does not support a finding that the contracting officer’s refusal to extend the deadline to 5:00 p.m. was arbitrary and capricious.

Therefore, the Board dismisses the present matter with prejudice for the reasons set forth herein. The protester did not submit a timely proposal, has not established that it was an abuse of discretion for the contracting officer to deny its request to accept a late proposal, and has not met the requirements of §1609.3 for submission of a late proposal. We have reviewed the other arguments raised by the protester and find them to be either tangential to the main issues herein, or without merit.

SO ORDERED.

DATED: October 10, 2012

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

CONCURRING:

⁸ Given the number of errors contained in the protester’s submission to the Board, it is conceivable that the protester’s lack of attention to detail may have caused or contributed to its inability to navigate the Ariba system properly.

/s/ Maxine E. McBean
MAXINE E. MCBEAN
Administrative Judge

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