



Decision

Matter of: VS Aviation Services, LLC

File: B-416538

Date: October 03, 2018

Samer W. Karadsheh, for the protester.
Benjamin M. Diliberto, Esq., Department of the Air Force, for the agency.
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participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider vendor's quotation is denied where the quotation was not received by the agency in a manner consistent with the terms of the solicitation.

DECISION

VS Aviation Services, LLC, a small business of Grand Rapids, Michigan, protests the award of a contract to Earle Kinlaw and Associates, Inc., a small business of Grayson, Georgia, under request for quotations (RFQ) No. F3QCCM7348A101, issued by the Department of the Air Force for the purchase of utility carts. The protester objects to the Air Force's decision not to consider the vendor's lower-priced quotation.

We deny the protest.

BACKGROUND

The RFQ, issued on May 3, 2018, as a combined synopsis/solicitation pursuant to Federal Acquisition Regulation (FAR) subpart 12.6, sought quotations for the award of a 5-year, fixed-price requirements contract for approximately 300 "golf/utility carts." Agency Report (AR), Tab 4, Conformed RFQ, at 1. Per the RFQ, award was to be made to the vendor that submitted the most advantageous quotation, considering price and technical specifications. Id. at 4. The RFQ further provided that quotations were to be submitted via email by 12:00 p.m., Eastern Daylight Time (EDT), on May 18, to the contracting officer and contract specialist, whose email addresses were specified in the RFQ. Id. at 1.

In addition, the RFQ incorporated by reference the late submission rules of FAR provision 52.212-1, which provides that “[o]fferors are responsible for submitting offers . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation.” FAR provision 52.212-1(f)(1); RFQ at 2. The provision further provides as follows:

Any offer . . . 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--

(A) 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 offers; or

(B) 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

FAR provision 52.212-1(f)(2)(i).

The contracting officer and the contract specialist report that by 12:00 p.m. EDT on May 18 they received “several” quotations in their email mailboxes. Contracting Officer’s Statement (COS) at 1; Decl. of Contract Specialist at 1. The agency maintains that it did not receive a quotation from VS Aviation. COS at 1. Following its evaluation of quotations, on June 18, the agency awarded the contract to Earle Kinlaw for \$6,439,369. Id.; AR, Tab 5, Federal Business Opportunities (FBO) Award Notice, at 1.

After reviewing the notice of award on the FBO website, a representative from VS Aviation emailed the contracting officer to request a post-award debriefing from the agency. Protest, exh. 7, Request for Debriefing, at 1. By email of June 21, the contracting officer advised the representative from VS Aviation that the agency never received a quotation from the vendor. AR, Tab 7, Contracting Officer Email to VS Aviation, June 21, 2018 (7:58 a.m.). The contracting officer also requested that VS Aviation “forward all original emails and attachments” to the contracting officials, and explained that the agency would “only accept the original, unaltered and unedited emails.” Id.

Over the next several days, having still not received VS Aviation’s original quotation from the vendor, the contracting officer “attempted to work with VS Aviation” and repeated his request for the emails several times. COS at 1-2; see, e.g., Protest, exh. 14., Contracting Officer Email to VS Aviation, June 25, 2018 (3:00 p.m.) (requesting that VS Aviation “just forward the original emails”). VS Aviation represents that it replied to each request, either by forwarding the original messages or resending the quotation as attachments to new messages, as well as providing an electronic link

for Air Force contracting officials to download the quotation.¹ Protest at 3; see, e.g., id., exh. 12, VS Aviation Email Re-Sending Quotation, June 21, 2018 (9:58 p.m.). Eventually, on June 26, the agency represents that it received VS Aviation's quotation for the first time. COS at 1. However, the agency never received the "original, unaltered and unedited email(s)" with VS Aviation's quotation, and, consequently, the later-received quotation was not considered for award. Id. at 2.

After learning that the agency did not receive or consider VS Aviation's quotation, the vendor protested.²

DISCUSSION

VS Aviation asserts that its quotation was properly and timely submitted, and the agency erred in not evaluating and considering the quotation for award. Protest at 6. The protester further contends that the award to Earle Kinlaw was improper because VS Aviation's quotation met the RFQ's technical specifications and offered a lower price than the awardee. Id. at 9.

The agency responds that it reasonably declined to consider VS Aviation's quotation because it first received the quotation after the Air Force had already evaluated other

¹ VS Aviation also insisted that the Air Force provide the vendor an electronic drop box for it to upload its quotation. Protest at 3; e.g., exh. 15, VS Aviation Email to Contracting Officer, June 27, 2018 (2:03 a.m.).

² For the record, VS Aviation advised our Office that it attempted to file its protest via GAO's Electronic Protest Docketing System (EPDS) prior to 5:30 p.m. on Friday, June 29, 2018, but was unsuccessful in doing so. VS Aviation Email to GAO, June 29, 2018 (5:29 p.m.). Thereafter, in accordance with our Office's guidance in these situations, VS Aviation emailed its protest to the GAO protests inbox at 5:51 p.m. on June 29. Id., June 29, 2018 (5:51 p.m.). However, because the filing was received after our Office's close of business on that Friday, the protest was deemed filed the next day on which the agency was open; that is, Monday, July 2. See 4 C.F.R. § 21.0(d), (g). Nevertheless, given that the basis of protest focuses on whether it was reasonable for the agency not to consider VS Aviation's quotation, and because the protester first learned on June 21 that the agency did not receive its quotation, we conclude that the protest was timely filed, i.e., within 10 days of when the actual basis of protest first was learned. See AR, Tab 7, Contracting Officer Email to VS Aviation, June 21, 2018 (7:58 a.m.) (advising VS Aviation that the Air Force did not receive its quotation); cf. CWIS, LLC, B-416544, July 12, 2018, 2018 CPD ¶ 236 (dismissing protest as untimely where, due to unsuccessful attempt to file via EPDS, the protest ultimately was filed outside of EPDS after 5:30 p.m. on the 10th day from when the basis of protest was known); see also 4 C.F.R. § 21.0(d) (since 10th day fell on a Sunday, time for filing extended to the next day on which the agency was open).

quotations and made its award decision. Memorandum of Law (MOL) at 4. We agree with the agency.

It is a vendor's responsibility, when transmitting its quotation electronically, to ensure the delivery of its quotation to the proper place at the proper time. Team Housing Solutions, B-414105, Feb. 10, 2017, 2017 CPD ¶ 55 at 4. Moreover, as a general matter, we have found that language in an RFQ requesting quotations by a certain date does not establish a firm closing date for receipt of quotations, absent a late submission provision expressly providing that quotations must be received by that date to be considered.³ M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3. On the other hand, where, as here, the RFQ contains the FAR provision 52.212-1(f), which expressly limits the agency's consideration of quotations that are received late, a procuring agency may not accept a late quotation that is not submitted in accordance with that FAR provision.⁴ Peers Health, B-413557.3, Mar. 16, 2017, 2017 CPD ¶ 93 at 3.

Here, we find unobjectionable the agency's decision not to consider VS Aviation's quotation. The record ultimately supports the protester's contention that it attempted to submit its quotation to the contracting officer, prior to the submission deadline, as attachments to two emails. See Comments, attach. 2, Decl. of VS Aviation Director, at 1. The first email was 21 megabytes (MB), and the other that was 24 MB. Id. The Air Force explains that the size limit for incoming emails is 10 MB, and consequently, each of VS Aviation's emails was "blocked due to its size." COS at 1. As such, the record confirms that neither the contracting officer nor the contract specialist received VS Aviation's quotation in their email mailboxes prior to when quotations were due at 12:00 p.m. EDT on May 18. Rather, the first time the agency received a quotation from VS Aviation was on June 26, more than a month after the submission deadline and more than a week after the award was made. See id. Consequently, because the quotation was received well after the time for the receipt of quotations, the agency's decision not to consider the late quotation is unobjectionable. See Peers Health, supra.

As highlighted above, the RFQ incorporated the standard "Instruction to Offerors-- Commercial Items" FAR provision, which expressly limits the agency's consideration of a late submission. See FAR provision 52.212-1(f). Where, as here, the RFQ contains a late submission provision that quotations must be received by a stated deadline to be

³ In fact, absent the inclusion of a specific late quotations provision in a solicitation, an agency may consider a quotation received prior to a selection decision if no substantial activity has transpired in evaluating quotations because an RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. Team Housing Solutions, supra, at 5.

⁴ Although this provision refers to "offers," it is clear from the agency's incorporation of this provision in the solicitation that it was intended to apply to the quotations received here.

considered, quotations cannot be considered if received after the deadline. See Turner Consulting Group, Inc., B-400421, Oct. 29, 2008, 2008 CPD ¶ 198 at 3-4 (finding agency's decision not to consider protester's late quotation proper where RFQ provided that quotations received after the exact time specified for receipt of quotations would not be considered); cf. Data Integrators, Inc., B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 2 (sustaining protest where agency awarded to late quotation despite solicitation provision that any quotation "received . . . after the exact time specified for receipt will not be considered"); M.Braun, Inc., *supra*, at 4 (sustaining protest where agency considered late quotation despite the RFQ's incorporation of FAR provision 52.212-1(f)).

We also highlight, for the record, that in order for the agency to properly accept a late quotation pursuant to FAR provision 52.212-1(f)(2)(i), the quotation must be received before award, and its acceptance must be found to not unduly delay competition. Here, as noted, the protester's quotation was not received until after the evaluation of the other quotations and more than a week after award. As such, the Air Force was under no obligation to consider the late quotation. See Blue Glacier Mgmt. Group, Inc., B-412897, June 30, 2016, 2016 CPD ¶ 177 at 5; see also Comspace Corp., B-274037, Nov. 14, 1996, 96-2 CPD ¶ 186 at 2 (noting that in certain situations, an agency is not precluded from considering a quotation received after the announced due date provided that no substantial activity has transpired in evaluating quotations, and the other firms submitting quotations would not be prejudiced).

In sum, because VS Aviation's quotation was not received at the email addresses designated in the solicitation by the RFQ's closing time, and in light of the applicability of FAR provision 52.212-1(f), we find unobjectionable the agency's decision not to consider VS Aviation's late quotation. While the government may lose the benefit of more advantageous terms included in a late submission, such as may be the case here, protecting the integrity of the competitive procurement process by ensuring fair and equal treatment among competitors outweighs the possible advantage to be gained by considering a late submission in a single procurement. Zebra Techs. Int'l, LLC, B-296158, June 24, 2005, 2005 CPD ¶ 122 at 3.

The protest is denied.

Thomas H. Armstrong
General Counsel