



Decision

Matter of: Turner Consulting Group, Inc.

File: B-400421

Date: October 29, 2008

Daniel A. Turner, Turner Consulting Group, Inc., for the protester.
Jeffrey C. Morhardt, Esq., and Antoiner White, Esq., Department of Education, for the agency.
Christina Sklarew, Esq., and Guy R. Petrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a request for quotations contains a late submission clause and provides for the electronic submission of quotations, an agency reasonably rejected protester's quotation as late where there was no evidence that the quotation was received by the time specified for the submission of quotations.

DECISION

Turner Consulting Group, Inc. of Washington, D.C. protests the Department of Education's (DOE) rejection of its quotation under the agency's "Technical Support for the Budget Formulation and Execution Line of Business" request for quotations.

We deny the protest.

The RFQ contemplated the award of an order to a General Services Administration Federal Supply Schedule vendor in accordance with Federal Acquisition Regulation (FAR) Subpart 8.4. The RFQ required that vendors submit their quotations electronically to the contract specialist and the contracting officer by 12 p.m. on Monday, July 21, 2008;¹ email addresses were provided for both agency recipients. Vendors were cautioned that they were responsible for ensuring that quotations were received by the agency at the specified date and time, and that "[q]uotes

¹ All references to time in this decision are to Eastern Time.

received after the exact time specified for receipt of quotes shall not be considered.”²
RFQ § L.2.

Turner states that on Sunday, July 20 at 10:12 p.m. (the evening before the due date for receipt of quotations), its vice president (VP) transmitted the firm’s quotation, consisting of an e-mail with five attached files in Adobe portable document format (pdf), to the contract specialist and contracting officer at the email addresses specified in the RFQ. Turner also transmitted copies of this email to two other, non-agency recipients, one of whom automatically forwarded his email to a government email account that is sponsored by the Office of Management and Budget (OMB) for his work on another project. This addressee received the email and all its attachments at his OMB mailbox a few minutes after Turner’s transmission. Protest at 7.

Turner states that, after sending its quotation to these four recipients, the firm sent a second email to the contract specialist and contracting officer, informing them that Turner had submitted its quotation. Turner did not receive any messages from its email system, informing the firm of errors or problems with the delivery of these emails. After transmitting these emails, Turner’s VP called the contract specialist and left a telephone voicemail message requesting confirmation that the agency had received Turner’s quotation. Turner did not receive any response to this voicemail request.

On Monday, July 21, at 10:05 a.m., Turner again called the contract specialist and left a second voicemail message seeking confirmation of the receipt of its quotation; one minute later, Turner left a similar message with the contracting officer. The contract specialist states that she arrived in her office at 8:10 a.m. but was in another building from 9:30 a.m. until 11:35 a.m. She also states that she received an “unintelligible [voicemail] message” at 10:16 p.m., on Sunday night, and Turner’s 10:05 a.m. Monday voicemail message. She states that after hearing the latter message at 11:35 a.m. on Monday, she searched her email for Turner’s quotation, but did not find it. She did, however, see Turner’s second email (which had no attachments) stating that Turner had submitted its proposal. The contract specialist states that she was still trying to locate Turner’s quotation at 12:25 p.m., after the closing time for receipt of quotations, when Turner’s VP called her, and she informed him that the agency had not received the firm’s quotation. Agency Report, Declaration of Contract Specialist, at 2.

Turner immediately re-sent the email with the five attached pdf files, comprising its quotation, which the agency again did not receive. The contract specialist suggested

² The RFQ did not include any other late submission provisions or include any of the FAR’s standard late submission clauses, such as that included in FAR § 52.212-1, “Instructions to Offerors - Commercial Items”.

that Turner separate the attachments and send the quotation in multiple emails. Turner did so, and four of the five attachments were successfully delivered to the contract specialist's email account. Turner eventually converted the remaining pdf file to a Microsoft Word document, which Turner successfully transmitted to the contract specialist. Id.

Two other firms successfully transmitted quotations to the agency by the noon deadline for receipt of quotations.

The contract specialist contacted the agency's Office of the Chief Information Officer and requested assistance in investigating the situation, asking whether there was any way to determine whether the agency's server had rejected Turner's email with its attachments. After being told that a search of the office's records had detected no problems in the agency's server and that there was no record of having received the email, even at the outermost point of entry in the agency's system, the contracting officer rejected Turner's quotation as late. This protest followed.

Turner does not dispute that its quotation was received late; rather, the crux of Turner's protest is that some unspecified error in the agency's internet system prevented the timely delivery of Turner's quotation. Turner maintains that, because its email to the agency was simultaneously and successfully transmitted to the two other non-agency recipients, the paramount cause of its quotation not reaching the designated agency email accounts must be something in the agency's email system or server, such as, Turner speculates, an arbitrary blocking of pdf files or other arbitrary fault in the agency's system.

DOE does not dispute that Turner attempted to send its quotation by email before the noon deadline, or that Turner took reasonable steps to confirm its delivery. Rather, the agency argues that there is no evidence that Turner's email ever reached its server and that, since other offerors successfully submitted pdf files, the problem most likely was caused by some technical "glitch" in one of Turner's pdf files. In this regard, the agency notes that when, after the closing date for receipt of quotations, Turner separately transmitted its attachments, all but one of the attachments was successfully transmitted. That one attachment had to be converted to a different format to be successfully delivered to the agency. Legal Memorandum at 4.

FAR provisions in Parts 14 and 15, governing the late delivery of bids and proposals, generally do not apply to the late delivery of a quotation. However, where as here the RFQ contains a late submission provision that quotations must be received by a stated deadline to be considered, quotations cannot be considered if received after the deadline. See Data Integrators, Inc., B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 2.

Here, there is no question that Turner's quotation was not received by the agency by the time required for submission of quotations. Although Turner contends that something in DOE's internet system prevented the timely receipt of Turner's quotation, there is no evidence in the record to support this contention. Rather,

DOE states that its investigation found no problems with the agency's servers that would prevent the timely receipt of quotations, and that the agency timely received other emailed quotations which included pdf files, see Contracting Officer's Statement at 3, which lends support to this view. Moreover, Turner's late delivery of its quotation could not be completed until after the protester had changed the format of one of its email attachments, which also lends support to the agency's view that Turner's inability to timely deliver its quotation to the agency was more likely the result of a corrupted file. We recognize that Turner disputes that its attachments were corrupted and that it continues to contend that it timely transmitted its quotation to DOE; this, however, does not demonstrate that DOE timely received the firm's quotation or was responsible for Turner's inability to timely deliver its quotation to the agency. In short, given that there is no evidence in the record to show actual timely receipt of the Turner's quotation, we have no basis to find unreasonable the agency's rejection of the quotation as late. See International Garment Processors, B-299674; B-299743; B-299746, July 17, 2007, 2007 CPD ¶ 130 at 7.

The protest is denied.

Gary L. Kepplinger
General Counsel