



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Peers Health

File: B-413557.3

Date: March 16, 2017

Jon Seymour, MD, Peers Health, for the protester.
David H. Turner, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel,
GAO, 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 timely received by the agency in a manner consistent with the terms of the solicitation.

DECISION

Peers Health, of Chicago, Illinois, protests the rejection, as late, of the quotation it submitted in response to request for quotations (RFQ) No. N00189-16-T-Z197, issued by the Department of the Navy, for occupational health disability and treatment guidelines. Peers contends that it submitted a timely quotation that the agency improperly rejected.

We deny the protest.

Quotations were due by 12:00 p.m. Eastern Standard Time (EST) on November 28, 2016. RFQ amend. 4, at 3. The solicitation included detailed instructions for the preparation and submission of proposals, as well as the evaluation criteria and basis for award. As relevant here, vendors were required to submit their quotations via email to the named point of contact at the email address provided in the solicitation, or by regular or overnight mail. Id. at 6.

The solicitation included Federal Acquisition Regulation (FAR) provision 52.212-1, Instructions to Offerors--Commercial Items, which provides, in relevant part, that:

(f) Late submissions, modifications, revisions, and withdrawals of offers:

(1) Offerors are responsible for submitting offers . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation. . .

(2)(i) 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); RFQ amend. 4, at 4. At 11:59 a.m. EST on November 28, one minute before the quotations were due, Peers transmitted its quotation, via email, to the address provided in the solicitation for the receipt of quotations. Protest at 5; see also Protest, Attach. 16, Email from Peers to Navy. The email was received on a government server at 11:59 a.m. EST, but did not reach the location designated in the solicitation for the receipt of quotations until 3:49 p.m. EST. Request for Dismissal, Attach. 8, Navy Forensic Report, Dec. 28, 2016, at 3; Email from Agency, Jan. 18, 2017, 2:21 p.m. The agency rejected Peer’s quotation as late, and this protest followed.

Peers asserts that its proposal was properly and timely submitted because it was received at a government server at 11:59 a.m. EST, prior to the 12:00 p.m. EST deadline for the receipt of quotations. The Navy disagrees that the quotation was timely received. According to the Navy, the quotation was late because it was submitted electronically, but was not received at the location designated in the solicitation prior to the 12:00 p.m. EST deadline, and was not received before 5:00 p.m. EST on November 27, one working day prior to the November 28 date specified for the receipt of offers.¹

¹In its response to the agency’s request for dismissal, Peers alleges, in essence, that the Navy acted in bad faith with respect to the handling of its proposal. We see no evidence of bad faith in this record. Instead, the record shows that the Navy took several steps, including conducting a forensic study, to investigate whether
(continued...)

We agree with the Navy that the quotation was submitted late and was properly rejected. The RFQ stated that proposals that are not received in the designated government office after the exact time specified are “late.” Here, since Peers’ electronically transmitted quotation was not received by the office designated for the receipt of quotations prior to the time set for the receipt of quotations, it is a late quotation. FAR provision 52.212-1(f)(2).

In addition, where a request for quotation includes the provision at FAR provision 52.212-1(f)(2)(i), 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. M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 4. As stated above, FAR provision 52.212-1(f)(2)(i)(A) provides that a late electronically submitted proposal, received before award, may be accepted if it was “transmitted through an electronic commerce method authorized by the solicitation,” and it was “received at the initial point of entry to the Government infrastructure” not later than 5:00 p.m. one working day before proposals were due. Since Peers’ quotation was not received at the initial point of entry to the Government infrastructure by 5:00 p.m. the day before proposals were due, the quotation cannot be accepted. Id.; FAR provision 52.212-1(f)(2)(i)(A).

Peers argues that its quotation should be considered under FAR provision 52.212-1(f)(2)(i)(B) because it was received by a government server, and was therefore under government control, prior to the time set for the receipt of quotations. We disagree. We previously addressed this issue in Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181, and concluded that FAR provision 52.212-1(f)(2)(i)(B) does not apply to quotations that are submitted electronically. See also Washingtonian Coach Corp., B-413809, Dec. 28, 2016, 2016 CPD ¶ 378. As we noted in Sea Box, FAR provision 52.212-1(f)(2)(i)(A) applies, by its express terms, to situations where a proposal has been submitted by an electronic commerce method, and unqualifiedly permits such a late proposal to be considered for award only if it was received at the initial point of entry to the government infrastructure no later than 5:00 p.m. the preceding working day. If we allowed late electronically transmitted proposals to be considered for award under FAR provision 52.212-1(f)(2)(i)(B), whether or not they were received at the initial point of entry by the preceding working day, this would render FAR provision 52.212-1(f)(2)(i)(A) a nullity because a proposal rejected under FAR provision 52.212-1(f)(2)(i)(A) could

(...continued)

Peers’ quotation was timely received. In this regard, where a vendor waits until one minute before offers are due to submit its quotation, it should expect the possibility that there will be a delay in transmitting it to the specified location, which will result in the quotation being received late.

be considered under FAR provision 52.212-1(f)(2)(i)(B), a result we do not believe was intended. Moreover, as we noted in Sea Box, such an interpretation would be inconsistent with the fundamental principle that statutes and regulations must be read and interpreted as a whole, thereby giving effect to all provisions.

The protest is denied

Susan A. Poling
General Counsel