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Decision

Matter of: Land Logistics

File: B-419247

Date: December 31, 2020

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DIGEST

Protests challenging agency's rejection of quotations as late are denied where rejection was reasonable and in accordance with the terms of the solicitations.

DECISION

Ray Land, Inc., d/b/a Land Logistics, a small business of Branford, Florida, protests the agency's rejection of its quotations as late, under two requests for quotations (RFQ) (No. 70FB8020Q00000001 and No. 70FB8020Q00000002), issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for transportable temporary housing unit (TTHU) general living kits (RFQ -0001) and bedroom kits (RFQ -0002). The protester contends that the agency unreasonably concluded its quotations were late.

We deny the protests.

BACKGROUND

On December 5, 2019, FEMA issued the RFQs as small business set-asides and in accordance with the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13.5. Agency Report (AR), Tab D, RFQ -0001 at 2; RFQ -0002 at 2; Tab A, Contracting Officer's Statement of Fact (COSF) at 1. The RFQs contemplated the establishment of blanket purchase agreements (BPAs) to acquire TTHU general living kits and bedroom kits for eligible disaster survivors on an as-needed basis. RFQ- 0001 at 36; RFQ -0002 at 36. General living kits, as described by the agency, include items

such as plates, bowls, utensils, cups, waste baskets, trash bags, paper towels, toilet paper, and sponges. COSF at 1. Bedroom kits, as described by the agency, include items such as sheets, pillowcases, pillows, towels, and blankets. *Id.* Both RFQs provided that the deadline for quotations was January 5, 2020 at 11:59 p.m. RFQ -0001 at 9; RFQ -0002 at 9.

According to the agency, both of the protester's quotations were received at 12:02 a.m. on January 6, three minutes after the time set for receipt of quotations. FEMA also received six timely quotations from other vendors in response to RFQ -0001 and three timely quotations from other vendors in response to RFQ -0002. COSF at 2. On September 22, FEMA notified Land Logistics that the agency had not evaluated either quotation because it was received late.¹ AR, Tab J, Notification of Untimely Quotation. On September 22 and 23, the contracting officer established BPAs with three vendors under RFQ -0001 and two vendors under RFQ -0002. COSF at 2. Land Logistics filed this protest with our Office on October 2.

DISCUSSION

Land Logistics contends that its quotations were timely because it submitted its quotations by 11:59 p.m. on January 5 and FEMA acknowledged receipt of the quotations without raising any issue regarding timeliness. Land Logistics also argues that even if the quotations it submitted for these RFQs were late, FEMA should have considered Land Logistics's substantively identical quotations from previous solicitations. For reasons discussed below, we deny the protest.²

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, while our Office has found that language in an RFQ requesting quotations by a certain date, without more, does not establish a firm closing date for receipt of quotations, *M. Braun, Inc.*, B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3-4, when the RFQ provides that quotations must be received by a stated deadline to be 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 rejection of protester's late quotation proper where RFQ provided that quotations received after 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").

¹ Although FEMA's notification is dated August 20, the contracting officer stated that this date is incorrect, and the notification was sent to the protester on September 22. COSF at 3 n.3.

² Although we do not specifically address each of the protester's arguments, we have considered them and find none to be meritorious.

Our Office has no basis to object to FEMA's rejection of Land Logistics's quotations as late. Here, the solicitations incorporated by reference FAR provision 52.212-1 (Instructions to Offerors-Commercial Items), which provides that vendors are responsible for submitting quotations "so as to reach the Government . . . by the time specified in the solicitation." RFQ -0001 at 10; RFQ -0002 at 10; FAR 52.212-1(f)(2)(i). The cited FAR provision further provides that any offer received after the exact time specified for receipt of offers is late and will not be considered unless (1) it is received before award is made, (2) the contracting officer determines that accepting the late offer would not unduly delay the acquisition, and (3) one of three exceptions applies.³

It is clear from the above that timeliness is based on the government's receipt of the quotation, not the vendor's submission of its quotation. Here, the record reflects that while Land Logistics claims that it sent its quotations to FEMA by 11:59 p.m. on January 5, FEMA did not receive Land Logistics's quotations until 12:01 a.m. on January 6.⁴ AR, Tab F, Tracking Report at 1. Specifically, the tracking report shows that the receiving host (FEMA) first received an email from the submitting host (Land Logistics) at 12:01:41 a.m. on January 6. *Id.* The report further reflects that the email transmission concluded at 12:01:49 a.m.⁵ *Id.* Because FEMA received Land Logistics's quotations after the deadline, FEMA properly determined the quotations were late. Therefore, this protest ground is denied.

³ The three exceptions are:

(A) [i]f [the quotation] 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) [t]here 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; or

(C) [i]f this solicitation is a request for proposals, it was the only proposal received.

FAR 52.212-1(f)(2)(i)(A)-(C).

⁴ According to the contracting officer, an electronic setting in the agency's email inbox occasionally rounds timestamps on email receipts to the nearest minute. COSF at 2 n.2. As relevant here, one timestamp shows that the agency received Land Logistics's email at 12:01:49 a.m. while another timestamp rounded the time to 12:02 am. *Id.*; Tracking Report at 1. Although Land Logistics argues that this rounding function may have had an adverse effect on the timeliness of its quotation, Comments at 2, the record does not support this contention. As shown above, Land Logistics's quotations were untimely under both timestamps.

⁵ Both quotations were submitted via the same email.

Furthermore, the record does not show that any of the exceptions identified in the FAR provision above permit consideration of the late-received quotations here. The first exception is inapplicable because FEMA did not receive either quotation at an initial point of entry at least one working day before the deadline. As mentioned above, FEMA first received Land Logistics's quotations after the deadline. Similarly, the second exception is also inapplicable because FEMA did not have control over the quotations prior to the deadline. Finally, Land Logistics's quotation was not the only quotation that FEMA received under either RFQ. Therefore, the third exception is inapplicable. Under these circumstances, FEMA properly refused to accept Land Logistics's untimely quotations.

Land Logistics next argues that even if its current quotations were late, FEMA should have considered previous quotations it submitted under different solicitations. Protest at 7. Specifically, Land Logistics contends that it previously submitted substantively identical quotations in September of 2019 in response to two canceled solicitations (No. 70FB8019Q00000001 and No. 70FB8019Q00000002) and therefore, FEMA should have considered those quotations to be timely responses to the present solicitations. *Id.* Land Logistics argues that the agency should have applied the exceptions for accepting late proposals as provided in FAR 52.212-1 to these previously submitted quotations.⁶ Protest at 6-7. We disagree.

It is a well-established principle that each procurement stands on its own. *See, e.g., Ira Wiesenfeld & Assocs.*, B-293632.3, June 21, 2004, 2004 CPD ¶ 132 at 3; *Discount Mach. & Equip., Inc.*, B-248321, July 22, 1992, 92-2 CPD ¶ 44 at 3 n.1. In other words, our Office evaluates an agency's actions to ensure they are reasonable and in accordance with the terms of the current solicitation, not previous solicitations. *See Professional Performance Development Group, Inc.*, B-408925, December 31, 2013, 2014 CPD ¶ 78 at 7 n.4. Therefore, Land Logistics's submission of different quotations in response to now-canceled solicitations is irrelevant to whether FEMA reasonably rejected its quotations as late for the current competition.

The protests are denied.

Thomas H. Armstrong
General Counsel

⁶ In its protest, Land Logistics argues that our Office should apply the timeliness exceptions provided in FAR 15.208. Protest at 6. These competitions, however, were conducted in accordance with FAR part 13, not FAR part 15. RFQ -0001 at 10; RFQ -0002 at 10. Therefore, this decision analyzes the protester's argument under FAR 52.212-1 as those timeliness exceptions were incorporated into the solicitations and are substantively identical to the exceptions listed in FAR 15.208. Additionally, the analysis and result would be the same under either provision.