



Decision

Matter of: Utech Products, Inc. dba EndoSoft LLC

File: B-416915

Date: December 27, 2018

Abhishek Bajaj, for the protester.
Scott N. Flesch, Esq., and Major Wayne Branom, Department of the Army, 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 protester asserts that it provided the quotation by email, but the quotation was not timely received by the agency in a manner consistent with the terms of the solicitation.

DECISION

Utech Products, Inc. dba EndoSoft LLC (EndoSoft), of Schenectady, New York, protests the Department of the Army's decision not to consider its quotation under request for quotations (RFQ) No. W81K00-18-Q-0198, issued for an endoscopy documentation system. EndoSoft asserts that it submitted its quotation prior to the closing date for receipt of quotations.

We deny the protest.

The agency issued the RFQ pursuant to Federal Acquisition Regulation (FAR) part 12, seeking quotations for the award of a fixed-price contract for an endoscopy documentation system. Agency Report (AR), Tab 3, RFQ, at 4. Award was to be made to the vendor that submitted the lowest-priced, technically acceptable quotation by 10:00 a.m. Eastern Standard Time on September 19, 2018.¹ *Id.* at 1, 66. As relevant

¹ In another section of the RFQ, the agency stated the due date for quotations was September 20. RFQ at 54. We do not need to address this discrepancy for purposes of this decision.

here, vendors were required to submit their quotations via email to the named point of contact at the email address provided in the solicitation. Id. at 54.

The solicitation included 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. . . .

RFQ at 52; FAR provision 52.212-1(f). In addition, the RFQ stated that:

All emails, regardless of size, need to be received by the [G]overnment server, by the stated date and time. The Government will not be responsible for any failure of transmission or receipt of the quotation, or any failure of the offeror to verify receipt of the emailed quotation. All quotes submitted after the deadline will be considered untimely and ineligible for award.

Id. at 54.

The Army did not receive a quotation from EndoSoft by the closing time for quotations, and, on September 27, in accordance with the solicitation, issued the order to the vendor that submitted the lowest-priced, technically acceptable quotation. Contracting Officer’s Statement (COS) at 1.

On October 2, the protester contacted the agency and learned of the award. On the same date, EndoSoft filed a protest with our Office, asserting that it submitted a quotation on September 12, that was lower priced than the quotation submitted by the awardee. Protest at 1. With its protest, EndoSoft submitted an email that it states was sent to the agency with its quotation on September 12. Protest, Email from EndoSoft to Agency, Sept. 12, 2018, 12:59 p.m. However, the email did not include an attachment

containing the quotation. Id. Also, on October 2, EndoSoft emailed the agency its quotation, which was received that day. Supp. COS at 1.

In response to the protest, the agency requested the Defense Information Systems Agency (DISA) to confirm any emails that were received by the named point of contact at the email address provided in the solicitation from the protester between September 11, and September 13. COS at 2. In response, DISA provided server logs that showed two emails received from the protester on September 11. Id.; AR, Tab 5, DISA Log of Emails. While the two emails sent to the agency on September 11 sought information about the solicitation, neither of the emails contained the quotation. Id. DISA did not find an email from EndoSoft sent September 12. On November 1, in the comments that the protester submitted in response to the agency report, the protester provided a screen shot of the September 12 email that it states was sent to the agency, but not the actual email with the attachment. Comments at 1. On November 19, our Office requested that the protester submit the email with the attachment containing the quotation that it asserts was sent to the agency on September 12. The protester did not respond to our request.

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. M. Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3. Here, the RFQ expressly stated that any quotation received after the deadline would be considered untimely and not eligible for award.

Since EndoSoft failed to establish that its quotation was submitted to the agency's designated email address prior to the time set for the receipt of quotations, EndoSoft has failed to meet its burden of showing that its quotation was timely delivered to the agency. Accordingly, the agency could not consider the quotation.

The protest is denied

Thomas H. Armstrong
General Counsel