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# Decision

**Matter of:** Robertson & Penn, Inc. dba Cusseta Laundry

**File:** B-417323

**Date:** May 16, 2019

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Adam K. Lasky, Esq., and Brad Bigos, Esq., Oles Morrison Rinker & Baker, LLP, for the protester.

Lawrence P. Block, Esq., and Elizabeth G. Leavy, Esq., Reed Smith LLP, for B&H PW, LLC dba Evergreen Linen Solutions, the intervenor.

Scott N. Flesch, Esq., and Bruce H. Robinson, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Quotation received after the submission deadline was late and therefore ineligible for consideration where request for quotations included the late submission provision set forth in Federal Acquisition Regulation provision 52.212-1(f)(2)(i). Although this provision refers to “offers” rather than “quotations,” it was clear from the agency’s inclusion of the provision that it was intended to apply to the quotations received.

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## DECISION

Robertson & Penn, Inc. (Robertson), of Cusseta, Georgia, doing business as Cusseta Laundry, protests the issuance of an order to B&H PW, LLC (B&H), of Oneonta, Alabama, doing business as Evergreen Linen Solutions, under request for quotations (RFQ) No. W911SF-19-T0003, issued by the Department of the Army for laundry and dry cleaning services. Robertson, the then incumbent contractor, contends that the agency unreasonably failed to consider its quotation.

We deny the protest.

## BACKGROUND

On November 20, 2018, the Army posted the RFQ on the Federal Business Opportunities (FBO) website as a small business set-aside for laundry and dry cleaning services at the Mission and Installation Contracting Command at Fort Benning, Georgia.

The RFQ contemplated issuance of a fixed-price order, for a five-year ordering period, to the vendor that submitted the most advantageous offer, considering three evaluation factors: technical capability, past performance, and price. RFQ at 25, 48. The RFQ stated that the non-price factors, when combined, were approximately equal to the price factor. Id. at 25. Elsewhere, the solicitation stated that the order would be issued to the vendor “whose offer conforms to the solicitation requirements and is also the lowest priced.”<sup>1</sup> Id. at 98.

Of relevance here, the solicitation contained instructions for the preparation and submission of quotations. Among other things, the solicitation stated that the “[O]fferor is to provide its submission in accordance with the instructions found herein and within the solicitation provision 52.212-1, Instructions to Offerors – Commercial Items.” Id. The referenced solicitation provision, Federal Acquisition Regulation (FAR) 52.212-1, Instructions to Offerors--Commercial Items, included the following relevant terms:

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

\* \* \* \* \*

(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; or

FAR provision 52.212-1(f)(2)(i); see RFQ at 23. The amended RFQ required submission of quotations by 12:00 p.m. on December 17, 2018.<sup>2</sup> RFQ amend. 2 at 1.

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<sup>1</sup> We note that the solicitation included two different award methodologies which may have created a potential ambiguity. Such an ambiguity was apparent on the face of the solicitation and should be raised prior to the time for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); see The Arora Grp., Inc., B-288127, Sept. 14, 2001, 2001 CPD ¶ 154 at 7 n.5 (patent ambiguities must be protested prior to the date for receipt of quotations).

<sup>2</sup> All times cited herein are to the Eastern Time Zone. RFQ at 98.

The Army received Robertson's quotation at 3:22 p.m. on December 17--more than 3 hours after the 12:00 p.m. deadline for submission of quotations. Agency Dismissal Req. at 2. Thereafter, on February 6, 2019, the agency issued the order to B&H for \$8,016,140.88. Id. exh. 4, FBO Award Notice at 1-2. This protest followed.

## DISCUSSION

The core of Robertson's protest is the belief that its quotation should have been deemed the best value and should have been selected for issuance of the order. In this regard, Robertson contends that the agency failed to adhere to the RFQ's stated award methodology by converting this best-value tradeoff procurement to a lowest-price, technically acceptable procurement. Protest at 3-4.

In response, the Army argues that Robertson's quotation was late thereby rendering it ineligible for the order. In support of this position, the agency points out that the RFQ included FAR provision 52.212-1(f)(2)(i), which established that quotations must be received by the submission date and time in order to be considered. Since the protester's quotation was received more than 3 hours after the submission deadline, its quotation was late and could not be considered. Agency Dismissal Req. at 3-6. Robertson disagrees, alleging that its quotation was not late. While the protester does not dispute that its quotation was submitted at 3:22 p.m. on December 17, the protester contends that FAR provision 52.212-1(f)(2)(i) does not apply to the procurement at issue and, alternatively, that the agency waived the submission deadline.<sup>3</sup>

Regarding the late submission requirements of FAR provision 52.212-1(f)(2)(i), which were included in the solicitation, Robertson maintains that they do not apply since the agency issued the solicitation as an RFQ, which contemplates the submission of quotations, whereas the language of FAR provision 52.212-1(f)(2)(i), by its terms applies to "offers." According to the protester, absent a specific provision regarding late "quotations," there was no applicable deadline for the submission of quotations because an RFQ does not seek offers that can be accepted by the agency to form a contract. Protester's Response to Dismissal Req. at 2-4 citing, e.g., PricewaterCoopers Public Sector, LLP, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 5; Gartner Inc., B-408933.2, B-408933.3, Feb. 12, 2014, 2014 CPD ¶ 67 at 2; Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3. For the reasons discussed below, the protester's reliance on this line of cases is misplaced.

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

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<sup>3</sup> The protester also argues that the agency waived the submission deadline because the agency never rejected its quotation as untimely nor advised the vendor of any such determination. Protester's Response to Dismissal Req. at 5. We find no merit to the protester's claims.

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. Indeed, as the cases relied on by the protester explain, absent the inclusion of a specific late quotations provision in a solicitation, late quotations may be considered up to the time of issuance of the order, 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, B-414105, Feb. 10, 2017, 2017 CPD ¶ 55 at 5; International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 2. However, in those cases where an RFQ included FAR provision 52.212-1(f)(2)(i), we have denied protests challenging the agency's rejection of late quotations on the basis that the agency may not consider a late quotation that is not submitted in accordance with this FAR provision. See, e.g., VS Aviation Servs., LLC, B-416538, Oct. 3, 2018, 2018 CPD ¶ 347 at 4; Peers Health, B-413557.3, March 16, 2017, 2017 CPD ¶ 93 at 3; Blue Glacier Mgmt Grp., Inc., B-412897, June 30, 2016, 2016 CPD ¶ 177 at 2; International Code Council, supra at 2-3; M. Braun, Inc., supra at 4.

As noted, the solicitation unequivocally instructed vendors to submit their quotations in accordance with FAR provision 52.212-1, Instructions to Offerors – Commercial Items. This provision includes the late submission provision FAR 52.212-1(f)(2)(i), which expressly provides that submissions must be received by the stated deadline in order to be considered, except under specified exceptions not applicable here. This is precisely the type of solicitation term and solicitation provision that we have repeatedly found precludes an agency from considering a quotation if received after the stated deadline. Blue Glacier Mgmt. Grp., Inc., supra; Advanced Decisions Vectors, Inc., B-412307, Jan. 11, 2016, 2016 CPD ¶ 18 at 7; see also, Data Integrators, Inc., B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 1 (finding agency's consideration of late quotation improper where solicitation incorporated a late quotation provision expressly providing that any quotation received after the exact time specified for receipt will not be considered).

While Robertson insists that FAR provision 52.212-1(f)(2)(i) cannot apply to the RFQ since the provision refers to “offers” as opposed to “quotations,” it is clear from the Army's inclusion of the provision in the solicitation that it was to apply to quotations received in response to this solicitation. This application is underscored by the specific instruction that vendors must provide their submissions in accordance with FAR provision 52.212-1, which includes FAR provision 52.212-1(f)(2)(i). See RFQ at 98. Moreover, our conclusion in this regard is consistent with our prior consideration of this same issue in VS Aviation Servs., supra at 4 n.4, where we expressly found that the agency's incorporation of FAR provision 52.212-1(f)(2)(i) in the RFQ made clear that the agency intended the provision to apply to the quotations it received, notwithstanding the provision's reference to “offers” instead of quotations.<sup>4</sup>

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<sup>4</sup> Our Office notes that agencies routinely issue RFQs, such as the solicitation in this case, that include solicitation provisions referring to “offers,” and interchangeably use the terms “offers” and “quotations.” Offers and quotations, however, are not synonymous, see FAR 13.004, Legal effect of quotations, noting that a quotation is not

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In sum, given the applicability of FAR provision 52.212-1(f) to this procurement, we find reasonable the agency's decision not to consider Robertson's quotation because it was received after the time set for submission of quotations, as none of the exceptions to the late submission rule apply here. While the government may lose the benefit of more advantageous terms included in a late quotation, as may be the case here, protecting the integrity of the competitive procurement process by ensuring fair and equal treatment among competing vendors outweighs the possible advantage to be gained by considering a late submission in a single procurement. VS Aviation Servs., LLC, supra at 5; Zebra Techs. Int'l, LLC, B-296158, June 24, 2005, 2005 CPD ¶ 122 at 3.

Next, Robertson contends that the Army effectively waived the time for submission of quotations based on agency communications with its general manager. Protester's Response to Dismissal Req. at 4-5. The protester filed a declaration from its general manager who stated that he received a call from the agency representative on December 17, who asked him if the firm "intended to submit a quote." Id. exh. 1, Decl. of Robertson's General Manager at 1. The general manager also stated that he asked the agency representative "if there was still time" to submit a quote and was told that Robertson "could submit a quote up until 4:30 p.m. EST that day." Id.

In her declaration, the contracting officer stated that she placed the call to the protester's general manager on December 17--after the 12:00 p.m. submission deadline. According to the contracting officer, she wanted to find out if Robertson had submitted a quote because her office "had been having issues receiving emails." Agency Rebuttal, exh. 1, Decl. of Contracting Officer at 1. However, the contracting officer disputed key details of the protester's declaration, as follows:

I never told [the general manager], or anyone for that matter, that [the protester] could submit a quote up until 4:30 PM EST on December 17, 2018. Additionally, I never told [the general manager], or anyone at [Robertson], that the closing date and time was extended at all.

Id.

We need not resolve or provide any opinion related to the differing accounts of the conversation between the parties because oral advice that would have the effect of altering the written terms of a solicitation does not operate to amend the solicitation or otherwise legally bind the agency. See, e.g., Noble Supply & Logistics, B-404731, Mar. 4, 2011, 2011 CPD ¶ 67 at 3; Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD

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an offer. In order to avoid confusion, agencies should take care to consider the terminology in their solicitations and tailor the language as necessary to ensure that they are appropriately and consistently using the correct terminology.

¶ 281 at 2. Here, the contracting officer did not amend the RFQ after her communications with the protester on December 17. Accordingly, the agency could not consider Robertson's late quotation, and we have no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel