



## Decision

**Matter of:** Vizocom

**File:** B-418246.2

**Date:** February 14, 2020

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### DIGEST

1. Protest that the agency unreasonably rejected the protester's hand-carried proposal as late is denied where the late delivery was not caused by improper government action but rather, the protester's own actions.
  2. Protest that a hand-carried proposal was under government control and hence, even if late, should have been accepted by the agency is denied where the proposal was not delivered to a facility designated for receipt of proposals and where the protester did not relinquish control of the proposal prior to submission deadline.
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### DECISION

Vizocom of San Diego, California, challenges the rejection of its proposal submitted in response to request for proposals (RFP) No. W56HZV-19-R-0079, issued by the Department of the Army, Army Contracting Command, for heavy duty vehicle variants. The protester contends that the agency unreasonably rejected its proposal as late.

We deny the protest.

### BACKGROUND

The RFP, as amended, established the deadline for receipt of proposals as October 15, 2019, 12:00 p.m. Eastern time. Agency Report (AR), Tab 4, RFP amend. 3, at 1, 4. Of particular relevance here, the RFP specified one location to which proposals were to be addressed and another location to which they were to be delivered. The RFP instructed that proposals, "whether hand-carried or submitted via U.S. mail," should be addressed

to “U.S. Army Contracting Command Warren, Bid Room, Bldg 231, Mail Stop 303, 6501 East 11 Mile Road, Warren, MI 48397-5000.” RFP § L.2.2.3. However, immediately below that instruction, the RFP provided that “[h]and-carried submissions,” including “proposals delivered by commercial carriers,” were to be delivered to:

the Detroit Arsenal (DTA) Mail Handling Facility (Building 255) between the hours of 8:00 AM and 1:00 PM local Warren, MI time. The package(s) will be dated and time stamped at the Mail Handling Facility and the Government will be responsible for forwarding the package(s) to the appropriate personnel.

RFP § L.2.2.4.

The RFP advised that “approval to enter the installation must be obtained prior to the closing date and time for receipt of proposals.” RFP § L.2.2.4.2. Further, it cautioned that “[d]ue to security procedures, delays are probable at the entry point and offerors must plan to accommodate them.” Id. Accordingly, the offerors were requested to “plan sufficient time to clear Detroit Arsenal security and ensure proposals reach the intended destination.” Id.

As relevant here, the solicitation incorporated by reference Federal Acquisition Regulation (FAR) provision 52.212-1, Instructions to Offerors--Commercial Items, which provides, in relevant part, that proposals received at the government office designated in the solicitation after the exact time specified for receipt of offers are “late” and will not be considered, except in certain limited circumstances. RFP § L.2.2.2.1.

The record indicates that on the due date of October 15, Vizocom attempted to have its proposal delivered by a courier. Specifically, the record reflects that at 11:32 a.m. Eastern time, Vizocom’s director of government services sent an email to the Army contract specialist, notifying him that a courier was “on her way” to deliver Vizocom’s proposal. Protest, exh. C, Vizocom’s Emails to Contracting Personnel, at 2; AR, Tab 5, Vizocom’s First Email to Contract Specialist, at 1. The record further shows that the courier arrived at the Detroit Arsenal Visitor Center shortly before noon, although the parties dispute whether the exact time of her arrival was 11:45 a.m. or 11:55 a.m. Eastern time.<sup>1</sup> Compare Additional Briefing regarding Protester’s Timeline at 1 with Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 5 and Additional Briefing regarding Protester’s Timeline, att. 1, at 5.

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<sup>1</sup> The protester contends that “the 10-minute discrepancy between 11:45 am and 11:55 noted in [the security guard’s] email accounts for the time it took the courier to reach [the security guard]”; and, that the courier “was on site prior to the deadline.” Additional Briefing regarding Protester’s Timeline at 2 n.1. We do not need to resolve this discrepancy here because we conclude below that the proposal was delivered late, and that the late delivery was not caused by improper government action.

At 11:55 a.m., Vizocom's director of government services sent another email to the Army contract specialist, informing him that the courier was at the visitor center but needed a sponsor in order to enter the facility, and asking him for assistance. AR, Tab 6, Vizocom's Second Email to Contract Specialist, at 1. At approximately 11:58 a.m., the visitor center personnel gave the courier directions to the mail handling facility located in building 255, to submit and receive a time stamp for the proposal. AR, Tab 7, Contracting Officer's Memorandum for the Record, at 1. The agency maintains that instead of going to the mail handling facility in building 255, as instructed, the courier attempted to submit the proposal at building 231. Protest, exh. A, Contracting Officer's Letter to Protester, at 1. The protester explains that the courier proceeded to building 231, the location to which proposals were to be addressed, and arrived there before the 12:00 p.m. deadline, but the agency personnel at that location refused to accept the proposal and were unable to redirect the courier to the correct submission place. Protester's Comments at 2. Ultimately, the proposal was received by the Army contracting personnel at approximately 12:20 p.m. Eastern time.<sup>2</sup> COS/MOL at 5.

On November 7, the Army informed Vizocom that its proposal had been rejected as late because it was received after the submission deadline. Protest, exh. A, Contracting Officer's Letter to Protester, at 1. This protest followed.

## DISCUSSION

Vizocom argues that the Army improperly rejected its proposals as late. The protester contends that its proposal was delivered to the address specified in the solicitation before the deadline for receipt of proposals but the agency personnel refused to accept the proposal and were "unaware of where to direct" the courier. Protest at 4. Vizocom asserts that the RFP's delivery instructions were ambiguous because they listed two different addresses for submission of proposals. Vizocom states that even if its proposal was delivered late, the delay was caused by improper government action, and the agency should have considered the proposal "notwithstanding the lateness." Protest at 5 (citing Pat Mathis Constr. Co., Inc., B-248979, Oct. 9, 1992, 92-2 CPD ¶ 236). For the reasons discussed below, we find no basis upon which to sustain the protest.

The RFP here incorporated by reference FAR provision 52.212-1, which includes the following relevant terms regarding late proposal submissions:

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

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<sup>2</sup> Vizocom states that "[e]ventually, the carrier was able to find the correct building and hand delivered the proposal to contracting officials sometime around 12:15 to 12:20 pm." Protest at 4. The agency maintains that the proposal was never delivered to the required location, but was left with the Army Contracting Command front office. COS/MOL at 5. We need not resolve this discrepancy, since both parties agree it was received by the agency contracting personnel after the deadline.

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(2)(i) Any offer, modification, revision, or withdrawal of an 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—

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(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 provisions 52.212-1; see RFP § L.2.2.2.1.

It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time. FAR provisions 52.212-1(f)(1); Washingtonian Coach Corp., B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4. Moreover, in addressing protests challenging an agency’s rejection of late bids or proposals, we have noted that delays in gaining access to government facilities are not unusual and should be expected. U.S. Aerospace, Inc., B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 11 n.17. Although the rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors. See Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3.

The protester argues, however, that a late hand-carried offer may be considered for award if the government’s misdirection or improper action was the paramount cause of the late delivery and consideration of the offer would not compromise the integrity of the competitive process. See, e.g., ALJUCAR, LLC, B-401148, June 8, 2009, 2009 CPD ¶ 124 at 3; Palomar Grading & Paving, Inc., B-274885, Jan. 10, 1997, 97-1 CPD ¶ 16 at 3. Nonetheless, even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not doing all it could or should have done to fulfill its responsibility. See ALJUCAR, LLC, supra; Palomar Grading & Paving, Inc., supra.

Here, Vizocom has not demonstrated any improper government action which could be considered the paramount cause of its late delivery. To the extent the protester asserts that the solicitation instructions were ambiguous, this protest ground is untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests, and protests of alleged apparent solicitation improprieties must be filed prior to the closing time for receipt of quotations. See 4 C.F.R. § 21.2(a)(1); Allied Tech. Group, Inc.,

B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10. Since Vizocom failed to do so, this protest ground is untimely, and will not be further considered.

Even were we to accept Vizocom's assertion that there was some improper government action here--for example, as the protester alleges, the inability of the security personnel at the installation to direct the courier to the correct delivery location--the record fails to establish that such an alleged impropriety was the paramount cause of the late delivery of Vizocom's proposal. Rather, Vizocom's own actions significantly contributed to the late submission of its proposal.

As discussed above, it was Vizocom's decision to dispatch the courier to the Army Contracting Command in Warren less than 30 minutes before proposals were due, which resulted in the courier's arrival at Warren's visitor center with approximately five minutes remaining before proposals were due. Notwithstanding the clear instructions in the RFP, Vizocom failed to obtain advance approval for entry to the installation, and failed to allocate sufficient time for the courier "to clear Detroit Arsenal security" to ensure timely delivery. See RFP § L.2.2.4.2. It was also Vizocom's representative's decision to ignore directions given by the security personnel at the visitor center to the place designated for proposal submission, which resulted in additional delay. On this record, we conclude that Vizocom's own actions were significant contributing factors to the late submission of its proposal, and that Vizocom assumed a risk in allowing only a short time for delivery of its proposal.

To the extent Vizocom asserts that it delivered the proposal in time, as its courier arrived at building 231 before the submission deadline but the personnel there refused to accept its proposal, the record does not establish that the government had control of the proposal prior to the deadline. As discussed above, the FAR states that a proposal received at the place designated for receipt of proposals may be accepted after a solicitation deadline, provided "[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." FAR provision 52.212-1(f)(2)(i)(B); see also B&S Transp., Inc., B-404648.3, Apr. 8, 2011, 2011 CPD ¶ 84 at 4 (explaining that a hand-delivered proposal must be physically relinquished to government personnel by the offeror or its agent to be considered placed under government control). Here, by its own admission, the protester did not relinquish control of its proposal until 12:15 or 12:20 p.m. Moreover, since building 231 was not the designated delivery location, we find no impropriety in the Army personnel's refusal to accept the proposal.

In sum, Vizocom neither delivered its proposal to the location designated for receipt of

proposals, nor was the proposal under government control prior to the deadline. We therefore find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel