



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Washingtonian Coach Corporation

File: B-413809

Date: December 28, 2016

L. R. Hardy, Washingtonian Coach Corporation, for the protester.
Aleia Barlow, Esq., and Robert Fleck, Esq., Department of Veterans Affairs, for the agency.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider offeror's proposal is denied where the proposal was not received at the specified locations prior to the time set for receipt of proposals.

DECISION

Washingtonian Coach Corporation (WCC), of Silver Spring, Maryland, a service-disabled veteran-owned small business, protests the rejection of its proposal as late, under request for proposals (RFP) No. VA119A-16-R-0324, issued by the Department of Veterans Affairs (VA), for executive driver transportation services. WCC contends that it submitted a timely proposal that the agency improperly rejected.

We deny the protest.

The VA issued the RFP on September 8, 2016, as a veteran-owned small business (VOSB) set-aside for executive driver transportation services in the National Capital Region and other geographical locations in neighboring states.¹ RFP at 6. The RFP anticipated the award of a labor-hour contract for a 1-year base period and four 1-year option periods. RFP at 57 and 13-15.

¹ This RFP was issued pursuant to Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items.

The RFP included detailed instructions for the preparation and submission of proposals as well as the evaluation criteria and basis for award. As relevant here, the solicitation required that proposals be submitted electronically and directed to the contracting officer and the contract specialist, and provided their respective email addresses. RFP at 50. Proposals were due by September 16, at 2 p.m. RFP at 1. The solicitation cautioned that “offers received after the due date/time, may not be considered.” RFP at 50.

In addition, the solicitation incorporated by reference the late submission provisions of FAR provision 52-212-1, which provides that “[o]fferors are responsible for submitting offers . . . so as to reach the Government office designated in the solicitation by the time specified in the solicitation.” RFP at 1; FAR § 52.212-1(f). The provision further provides:

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 § 52.212-1(f)(2)(i).

At 1:19:29 p.m. on September 16, the day proposals were due, WCC transmitted its proposal via email to the two VA email addresses designated for receipt of proposals. Protest at 1. These emails did not reach their designated VA email addresses. Contracting Officer’s Statement at 1.

WCC said that they called the contract specialist on September 16, at 1:55 p.m., 2:01 p.m., 2:05 p.m. and 2:19 p.m., in an attempt to confirm receipt of its proposal, and received a voicemail message. Protest at 1. At 2:01 p.m. the protester stated that it left a message requesting that the agency acknowledge receipt of its proposal. Id.

The agency states that at 2:25 p.m. and 2:34 p.m. the contracting officer and the contract specialist both received emails from WCC requesting acknowledgement of

receipt of its proposal. Agency Report (AR), Tab 3, Email from WCC to Agency, Sept. 16, 2016 at 2:25 pm; Tab 4, Email from WCC to Agency, Sept. 16, 2016 at 2:34 p.m.

The agency states that upon receipt of these two emails from WCC the agency contacted its Information Technology (IT) helpdesk to determine if, and when, additional emails had been submitted from the same email address. Contracting Officer's Statement at 1; AR, Tab 5, Emails from Contracting Officer to IT Helpdesk (Sept. 16, 2016).

The IT staff responded on September 21 that there were eight emails from WCC that were sent on September 16 that "exceeded the size limit which is allowed by VA Policy. The allowed size is 10 MB total message." AR, Tab 7, Email from IT Staff to Contracting Officer (Sept. 21, 2016). The IT desk stated that these emails were sent to the agency from WCC but were never received "at the Local Exchange level due to being dropped at the TIC [Trusted Internet Connections] Gateways because of their size." AR, Tab 7, Email from IT Staff to Contracting Officer (Sept. 22, 2016).

The agency then responded to WCC that it received two emails from WCC asking the agency to confirm receipt of its proposal, but that the actual proposal was not received by the contracting officer or contract specialist. AR, Tab 8, Email from Contracting Officer to WCC, Sept. 22, 2016. The contracting officer stated that the IT division confirmed that the other emails were sent to the agency on September 16, but were not received "because they exceeded the size limit for our email system (10 MB)." Id.

The agency received four timely proposals.² Email from VA to GAO, Dec. 6, 2016. The agency decided not to consider the proposal from WCC because based on FAR § 52.212-1 it was late as the proposal was sent electronically and was not submitted by 5:00 p.m. on Sept. 15, 2016, or received at the government office designated for receipt of proposals by the due date and time (2:00 p.m. on September 16). Contracting Officer Statement at 2. This protest to our Office followed.³

² The agency states that it received four timely proposals, however one was ultimately removed from competition because the company was not eligible for the VOSB set-aside. Email from VA to GAO (Dec. 6, 2016).

³ WCC also argues that this solicitation should have been set aside for service-disabled veteran-owned small businesses. We find that this protest ground concerns an apparent solicitation impropriety that, to be timely, had to have been protested before the due date for proposals. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that
(continued...)

DISCUSSION

WCC asserts that its proposal was properly and timely submitted and the agency erred in not evaluating and considering its proposal. WCC argues that the documentation that it submitted showing that its proposal was sent by email and the return path of that email, shows that the agency received the email before proposals were due. Protest at 2-3. The protester also maintains that it followed all of the instructions for the submission of proposals in the solicitation, and that the solicitation made no mention of the size limit of its email system. Id. at 2; Comments at 1.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 52.212-1(f)(1); see International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 3; see M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 4; see Lakeshore Eng'g Servs., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. Proposals that are received in the designated government office after the exact time specified are "late," and generally may be considered only if received before award and the circumstances satisfy the specific requirements set forth in FAR §15.208(b)(1). While 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.

We view it as an offeror's responsibility, when transmitting its proposal electronically, to ensure the proposal's timely delivery by transmitting the proposal sufficiently in advance of the time set for receipt of proposals to allow for timely receipt by the agency. As stated above, and referenced in the solicitation, FAR § 52.212-1(f)(2)(i)(A) provides that a late 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.

We note that in this instance the agency received four timely proposals. While it is true that the solicitation did not include a size limit for electronic submissions, nevertheless, it is an offeror's responsibility to ensure that an electronically submitted proposal is received by—not just submitted to—the appropriate agency

(...continued)

time. 4 C.F.R. § 21.2(a)(1); see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. This protest allegation filed after the receipt of proposals is untimely and will not be considered further. Id.

email address prior to the time set for closing. See Lakeshore Eng'g Servs., supra at 4.

In sum, since WCC's electronically transmitted proposal was not received by the contracting officer or contract specialist, at the time designated for the receipt of proposals, it is a late proposal. Further, since it was not received at the initial point of entry by 5:00 p.m. the day before proposals were due, the late proposal cannot be accepted. FAR § 52.212-1(f)(2)(i)(A); Sea Box, Inc. B-291056, Oct. 31, 2002, 2002 CPD 181 at 4; Assoc. Fabricators & Constructors, Inc., B-405872, Dec. 14, 2011, 2011 CPD ¶ 279 at 4.

The protest is denied.

Susan A. Poling
General Counsel