

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

Decision

Matter of: Vantex Service Corporation

File: B-407935

Date: February 28, 2013

Alistair Elliott, for the protester.

Maj. Samuel E. Gregory, Department of the Army, for the agency.

K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly declined to accept protester's late quotation where there is no evidence that improper government action caused the United States Postal Service's failure to make timely delivery of the quotation.

DECISION

Vantex Service Corporation, of Austin, Texas, protests the rejection of its quotation as late under request for quotations (RFQ) W911SG-13-T-3011, issued by the United States Army, Mission and Installation Contracting Command (MICC), for latrines and portable hand-washing stations, and servicing of same, at several locations at Fort Bliss, Texas. The protester contends that its quotation should not have been rejected because it had been sent using the United States Postal Service (USPS) express mail service seven days prior to the closing date specified in the solicitation, and because the USPS carrier attempted to deliver the submissions prior to the solicitation closing date.

We deny the protest.

BACKGROUND

On December 14, 2012, the agency issued the RFQ requiring firms to submit their quotations by 4:00 p.m. on December 27, 2012. The RFQ instructed firms to submit their quotations by mail to the Department of the Army, Mission and Installation Contracting Command, at 1733 Pleasonton Road, Fort Bliss, TX 79916-6012, or to hand carry them to Bldg 2021, Club Road, Fort Bliss, TX 79916. As explained by the agency, the mailing address identified in the RFQ is a facility that houses the

United States Post Office (USPO) for Fort Bliss, as well as the Fort Bliss Official Mail Distribution Center ("mailroom").¹ The RFQ provided that late submissions would be handled in accordance with the provisions of Federal Acquisition Regulation (FAR) § 52.212-1.

As explained by Vantex, it mailed its quotation using the United States Postal Service (USPS) express mail service, to the address specified in the RFQ on December 21, 2012. A copy of the express mail receipt indicates that Vantex directed the USPS not to deliver the package on a weekend or on a holiday. See Protest Exhibit 3, USPS Receipt. Notwithstanding this direction, tracking information provided by the USPS website indicates that the USPO attempted delivery on Saturday, December 22, and that notice was left because no authorized recipient was available to receive the package.² Additionally, all federal offices were closed on Monday, December 24, pursuant to an Executive Order, and on Tuesday, December 25, a federal holiday. As a result, the USPO and the post mailroom did not reopen until Wednesday, December 26. According to the agency's accountable mail clerk, when the post mailroom reopened, agency personnel did not find notice of the USPS's December 22, attempted delivery of Vantex's quotation. See Declaration of Accountable Mail Clerk, January 16, 2013, ¶ 4.

The record reflects that on December 27, a few hours before quotations were due, Vantex e-mailed the contracting officer (CO) to determine whether the agency had received its quotation. The CO, after checking with the mailroom as well as the USPO on Fort Bliss, advised the protester that it had not received the quotation. Agency Report, p. 7. In this regard, the agency explains that on December 27, an agency mail clerk conducted two mail runs to the USPO located on Fort Bliss, and found nothing from the protester, and nothing indicating that a parcel or package was available for pickup. See Declaration of MICC Mail Clerk, January 15, 2013, ¶ 3. Later that day, Vantex informed the CO that it had located the package at the USPO in El Paso, TX. The USPO ultimately delivered Vantex's quotation to the agency on December 28.

¹ According to the statement of the agency's accountable mail clerk, under the usual procedure, mail is delivered to the USPS in El Paso, TX, five miles from the agency mailroom, where it is sorted and then transported to the Fort Bliss USPO. The Fort Bliss USPO sorts the mail and then transfers it to the post mailroom. The accountable mail clerk for the agency sends notice to the MICC when items need to be picked up. See Declaration of Accountable Mail Clerk, January 16, 2013, ¶ 2.

² As explained by the agency, the USPO located on Fort Bliss is open on Saturdays, but the post mailroom is closed. See Declaration of Accountable Mail Clerk, January 16, 2013, ¶ 4.

On January 2, 2013, the protester e-mailed the CO requesting that the agency accept its quotation, asserting that it was timely given the attempted delivery on December 22. On January 3, the agency issued the order to another firm and posted notice of the order on the FedBizOpps website. On January 7, the protester received a letter from the agency, advising Vantex that the facts and the law did not permit the agency to consider the protester's late quotation. Vantex then filed its protest with our Office on January 11, challenging the agency's rejection of its quotation as late.³

DISCUSSION

Vantex argues that the agency erroneously rejected its quotation as late because, in the protester's view, the USPS tracking information provides acceptable evidence to establish that the quotation was received at the government installation designated for receipt of quotations, and that it was under the government's control prior to the time set for receipt of quotations. The protester also maintains that the procuring office passed the responsibility of receiving quotations to the USPO on Fort Bliss and that it was the agency's failure to retrieve the package, after having received notice of the attempted delivery, which caused its quotation to be delivered late.

As a general matter, quotations may be considered up to the time of issuance of an 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. Rather, the government's purchase order represents an offer that the vendor may accept through performance, or by a formal acceptance document. DataVault Corp., B-248664, Sept. 10, 1992, 92-2 CPD ¶ 166 at 2. Moreover, 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. Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3. The RFQ in this case, however, included a late submission provision where it incorporated the standard "Instruction to Offerors--Commercial Items" FAR clause,

³ The agency argues that Vantex's protest is untimely because Vantex recognized that its quotation was late on December 28, as reflected by Vantex's communications with its own counsel, yet it did not file its protest until January 11, more than 10 days later. We disagree. Regardless of what Vantex, or its counsel may have believed on December 28, Vantex's basis for protest did not arise until the agency took affirmative action adverse to Vantex. Specifically, such action occurred, at the earliest, when the agency announced the issuance of the order to a firm with a higher price on January 3, or, at the latest, when the agency provided Vantex with a letter on January 7, specifically advising Vantex that the agency would not consider its quotation because it was late. Having filed within 10 days of both of these dates, the protest is timely. 4 C.F.R. § 21.2(a)(2).

which expressly limits the agency's consideration of a late submission. See FAR § 52.212-1(f).

Specifically, under the applicable FAR provision, a quotation received at the office designated in the solicitation after the exact time specified for receipt of quotations 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 quotation would not unduly delay the acquisition; and, as relevant, (3) there is acceptable evidence to establish that it was received at the government installation designated for receipt of quotations and was under the government's control prior to the time set for receipt of quotations. See FAR § 52.212-1(f).

Here, the late quotation exception established by FAR § 52.212-1(f) does not apply since the record establishes that Vantex's quotation was not received at the government installation designated for receipt of quotations prior to the time established by the RFQ. The undisputed USPS tracking and delivery information provided by the parties show that the agency did not actually receive the quotation until December 28, the day after quotations were due. Although the quotation may have been received by the USPS prior to the due date, and the USPS is part of the government, we have held that government control relates to the control of the procuring agency, not the USPS. Ferren-Manuele & Associates, Inc., B-235191, Apr. 28, 1989, 89-1 CPD ¶ 411. It is, therefore, our view that the exception in FAR § 52.212-1(f) does not allow for the consideration of the late quotation.

An offer, or quotation, that arrives late may also be considered if it is shown that the paramount reason for late receipt was improper government action, and where consideration of the quotation would not compromise the integrity of the competitive procurement process. Northwest Heritage Consultants, B-299547, May 10, 2007, 2007 CPD ¶ 93 at 3. Improper government action in this context is affirmative action that made it impossible for the firm to deliver the quotation on time. Id. The record in this case, however, only demonstrates that the USPS, contrary to Vantex's instructions, attempted to deliver Vantex's quotation on a Saturday, when the agency's mailroom was closed. Although, the USPS tracking information indicates that the USPS left notice of the attempted delivery, as noted above, the agency's mail clerk has declared that no such notice was found when the mailroom reopened three days after the USPS supposedly left the notice, and that the agency did not learn of Vantex's quotation until it was contacted by Vantex on the day quotations were due. Absent some affirmative evidence that the agency failed to make proper arrangements for deliveries, or in some way mishandled the protester's submission, we have no basis to conclude that agency action was the

paramount cause of late delivery in this case. Thus, we find that the agency properly refused to consider the protester's late quotation.⁴

The protest is denied.

Susan A. Poling
General Counsel

⁴ The protester also argues that local firms had an unfair advantage because they could hand deliver quotations to the contracting office. In addition, the protester submits that the agency's failure to allow for electronic submissions created an obstacle for meaningful compliance with the solicitation. These challenges, however, pertain to the terms of the RFQ and are untimely. Our Bid Protest Regulations require that protests of alleged apparent solicitation improprieties be filed prior to the closing date for receipt of proposals or quotations. 4 C.F.R. § 21.2(a)(1).