



## Decision

**Matter of:** The Ulysses Group, LLC

**File:** B-420566

**Date:** June 7, 2022

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Andrew Lewis, Esq., The Ulysses Group, LLC, for the protester.  
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Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

Protest that the agency unreasonably failed to consider protester's proposal is denied where the protester did not submit its proposal in accordance with the solicitation instructions.

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### DECISION

The Ulysses Group, LLC (Ulysses), a small business of Charleston, South Carolina, protests the decision by the Department of the Air Force not to consider the proposal prepared by Ulysses in response to small business innovation research (SBIR) commercial solutions opening No. X22.1, Topic No. AF221-DCSO1, for research and development. Ulysses argues that it submitted a timely proposal and the Air Force unreasonably failed to consider it.

We deny the protest.

### BACKGROUND

On December 1, 2021, the Air Force pre-released the commercial solutions opening (CSO) under the SBIR program seeking proposals from small business concerns. Agency Report (AR), Tab 3, CSO at 1, 24-25. The CSO sought proposals for innovative

solutions related to five identified “strategic capabilities” or “previously unconsidered area[s].”<sup>1</sup> *Id.* at 5.

The CSO required all proposals to be submitted electronically through the Department of Defense (DOD) SBIR/small business technology transfer innovation portal (DSIP).<sup>2</sup> *Id.* The solicitation did not provide for an alternative proposal submission method. A complete proposal consisted of a DSIP registration and six different volumes. *Id.* at 24-25. The DSIP opened for proposal submission on January 12, 2022 and the deadline for submission was 12:00 p.m. Eastern Time, on February 10. *Id.* at 1. Regarding the proposal deadline, the solicitation included the following warning:

**Deadline for Receipt:** No exceptions will be made for the submission deadline above. [The Air Force] recommends early submission, as computer traffic gets heavy near announcement closing. **Do not wait until the last minute. [The Air Force] is not responsible for missed proposal submission due to system lag or inaccessibility.**

*Id.* (emphasis in original).

During the proposal submission window, Ulysses prepared a proposal and attempted to submit it via DSIP. *Protest* at 5. According to Ulysses, it was able to upload all required volumes to DSIP except for its technical volume. *Id.* Ulysses explains that when trying to upload its technical volume, DSIP would indicate that the upload was 99 percent complete but would not ever reach 100 percent completion. *Id.* Ulysses further explains that a short time after each technical volume upload attempt, DSIP would indicate that the upload had failed. *Id.* at 5, 12.

Two days before the proposal submission deadline, Ulysses emailed the DSIP support desk for assistance.<sup>3</sup> *Id.* at 6; AR, Tab 5, Email from Ulysses to Support Desk, Feb. 8, 2022 (10:09 a.m.). This email explained that Ulysses was experiencing a technical issue when trying to upload its technical volume. *Id.* The support desk responded about an hour later with a list of troubleshooting techniques. *Id.*, Email from Support Desk to Ulysses, Feb. 8, 2022 (11:25 a.m.). The support desk recommended that Ulysses ensure its technical volume was under the DSIP file size limit, was in an acceptable file format, used an appropriate naming convention, and that it did not contain moving images or electronic signatures. *Id.* Additionally, the support desk recommended accessing the DSIP website using a preferred web browser such as

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<sup>1</sup> The five identified strategic capabilities were: (1) global persistent awareness; (2) resilient information sharing; (3) rapid, effective decision-making; (4) complexity, unpredictability, and mass; and (5) speed and reach of disruption and lethality. CSO at 5.

<sup>2</sup> DSIP can be accessed at <https://www.dodsbirsttr.mil/>. CSO at 1.

<sup>3</sup> The CSO informed offerors that “[r]equest for support with using the . . . (DSIP) can be directed to the DSIP Help Desk by email.” CSO at 1.

Chrome, and ensuring that multiple web browser tabs were not open while working with DSIP. *Id.*

Shortly after receiving the support desk's email, Ulysses responded that it was aware of the suggested troubleshooting techniques as they were listed on the DSIP website, and that the firm had already tried those methods. *Id.*, Email from Ulysses to Support Desk, Feb. 8, 2022 (11:49 a.m.). Ulysses then suggested that there was a technical issue with DSIP. *Id.*

Also on February 8, Ulysses sent an email to [usaf.team@afsbirsttr.us](mailto:usaf.team@afsbirsttr.us).<sup>4</sup> In this email, Ulysses suggested that there was a technical issue with DSIP, expressed frustration with the DSIP support desk, and stated that the agency should have provided a backup proposal submission method. *Id.*, Email from Ulysses to Air Force, Feb. 8, 2022 (12:10 p.m.). This email was forwarded by the recipient to the cognizant contracting officer. See Protest at 7; see also AR, Tab 5, Email from Air Force to Ulysses, Feb. 8, 2022 (1:59 p.m.).

Later on February 8, the contracting officer responded to Ulysses. The contracting officer explained that DOD requires the Air Force to use DSIP for the receipt of SBIR proposals. AR, Tab 5, Email from Contracting Officer to Ulysses, Feb. 8, 2022 (1:59 p.m.). The contracting officer also wrote: "In some rare circumstances, the Air Force solicitation Contracting Officer will accept proposal documents outside the system with concurrence from Air Force Legal Counsel. However, these situations will not be considered until the proposal submission deadline has passed and includes review of DSIP system forensics." *Id.*

The following day, Ulysses responded to the contracting officer. Ulysses further explained the technical issue it experienced while trying to submit its technical volume. *Id.*, Email from Ulysses to Contracting Officer, Feb. 9, 2022. Ulysses then asked the contracting officer to advise it of "the best route to pursue this once the SBIR closes." *Id.* The contracting officer requested that Ulysses detail its attempts to submit its proposal through DSIP, describe its messages to the DSIP support desk, and provide the support desk's responses. *Id.*, Email from Contracting Officer to Ulysses, Feb. 9, 2022.

Also on February 9, Ulysses sent two more emails to the DSIP support desk; one asking for assistance, and the second containing the firm's technical volume and a request for the support desk to upload the volume on Ulysses's behalf. Protest, attach B, Email from Ulysses to Support Desk, Feb. 9, 2022 (11:55 a.m.); *id.*, Email from Ulysses to Support Desk, Feb. 9, 2022 (11:58 a.m.). The support desk responded about 5 hours later, stating that it was "unable to replicate any system issue with

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<sup>4</sup> The CSO explained that SBIR program questions should be directed to [usaf.team@afsbirsttr.us](mailto:usaf.team@afsbirsttr.us), and that requests for support using the DSIP portal should be directed to the DSIP support desk. CSO at 1.

uploading files other than some latency,<sup>5</sup> which [is] expected towards the end of the submission window.” *Id.*, Email from Support Desk to Ulysses, Feb. 9, 2022. The support desk explained that since it was not able to identify an issue with DSIP, Ulysses’s technical problem was likely due to something wrong with the electronic file containing the technical volume. *Id.*

At this time, the support desk recommended three additional troubleshooting steps. First, it recommended renaming the technical volume file to something different. *Id.* Second, it recommended saving a new version of the technical volume file and trying to upload the new version. *Id.* Third, it recommended sending the technical volume file to “another user with access to the proposal” and having that user attempt to upload the file from a different computer. *Id.* The support desk also stated: “Please let us know if none of those steps allow the file to upload. As all files must be submitted through the DSIP, there is no way for DSIP Support to [upload the technical volume] on your behalf.” *Id.*

Ulysses states that it followed the second set of troubleshooting steps and that they proved ineffective. See Protest at 9. The record reflects that Ulysses did not engage in any further communication with the support desk. See Protest, attach. C, Agency-Level Protest, Email from Ulysses to Contracting Officer, Feb. 18, 2022 (4:03 p.m.) (explaining that the support desk was contacted twice without success, and stating “I am not sure what a third inquiry would have done.”). Ultimately, Ulysses was unable to successfully upload its complete proposal to DSIP before the February 10 submission deadline.

The day after proposals were due, Ulysses filed an agency-level protest. AR, Tab 7, Agency-Level Protest and Agency Resp. at 3-6.<sup>6</sup> In the agency-level protest, Ulysses detailed its efforts to submit its proposal via DSIP, expressed its displeasure with the agency’s actions, and requested that the Air Force “authorize the acceptance” of its proposal. *Id.* On February 18, the agency declined to accept Ulysses’s proposal, effectively denying the agency-level protest. *Id.* at 2. On February 26, Ulysses filed the instant protest with our Office.

#### Preliminary Procedural Matters

Ulysses raises three challenges. First, it argues that the agency’s decision not to consider its proposal was unreasonable. Protest at 12-17. Second, it argues that the solicitation’s requirement to submit proposals via DSIP without any alternative submission method was overly restrictive of competition. *Id.* at 17-18. Third, it argues

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<sup>5</sup> According to the support desk manager, “[l]atency is a term used to describe the slowing of the DSIP system (e.g., slower upload speeds, trouble accessing the site, etc.), which is typically caused by a large volume of users logging into the site all at one time.” AR, Tab 11, Affidavit of Support Desk Manager at ¶ 6.

<sup>6</sup> Citations to Tab 7 of the agency report reference the Adobe PDF page numbers of the combined document.

that the solicitation allows the agency to accept proposals after the due date set for receipt of proposals and therefore the Air Force should allow Ulysses another opportunity to transmit its proposal. *Id.* at 18-19.

On March 7, the Air Force requested partial dismissal of the protest. Req. for Dismissal at 2-3. The agency argued that Ulysses's second and third protest grounds should be dismissed as untimely challenges to the terms of the solicitation. As explained below, we agreed with the agency regarding only the second protest ground. Regarding the third protest ground, we concluded that dismissal was not appropriate. Below, we explain our conclusion to dismiss the second protest ground.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. A protest based on alleged improprieties in a solicitation that are apparent prior to the time set for receipt of initial proposals must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). However, in cases where an alleged impropriety in a solicitation was timely protested to an agency, any subsequent protest to GAO will be considered timely if filed within the 10 day period provided by our regulations, even if filed after the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(3); *Masai Techs. Corp.*, B-400106, May 27, 2008, 2008 CPD ¶ 100 at 2.

The solicitation required all proposals to be prepared and submitted through DSIP. CSO at 1. The Air Force contends that the requirement to submit proposals via DSIP was clearly stated in the solicitation and that Ulysses's challenge to this requirement--filed after the February 10 due date set for receipt of proposals--is an untimely challenge of the solicitation's terms. Req. for Dismissal at 2-3.

Ulysses does not dispute that it is challenging the terms of the solicitation but nonetheless argues that this protest ground is timely filed.<sup>7</sup> See Resp. to Req. for Dismissal at 2-5. In this regard, Ulysses suggests that an email sent to the agency on February 8 was an agency-level protest challenging the DSIP submission requirement. Resp. to Req. for Dismissal at 2. According to the protester, it received initial adverse agency action on February 18 when the contracting officer declined to accept its proposal. *Id.* at 3. Ulysses argues that the instant protest ground (filed on February 26) is timely because it was filed at GAO within the 10 days of the agency's adverse action. *Id.* at 2. Further, Ulysses submits that even if our Office finds the protest ground untimely, we should decide the issue on the merits under either the good cause exception or the significant issue exception to our timeliness rules.

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<sup>7</sup> Ulysses raised several collateral arguments to support the timeliness of this protest ground. While our decision does not address each argument raised, we have reviewed them all and find no basis to conclude that this challenge was timely filed.

The Federal Acquisition Regulation (FAR) prescribes substantive requirements for all agency-level protests. FAR 33.103(d)(2). For example, an agency-level protest must include a detailed statement of the legal and factual grounds for the protest as well as request a ruling by the agency and the form of relief requested. *Id.* Our Office has consistently explained that, to be regarded as a protest, a written statement need not explicitly state that it is intended to be a protest, but must convey the intent to protest by a specific expression of dissatisfaction with the agency's procurement actions and request relief. *Silver Investments, Inc.*, B-419028, Oct. 26, 2020, 2020 CPD ¶ 332 at 4-5. A letter or email that merely expresses a suggestion, hope, or expectation, does not constitute an agency-level protest. *Masai Techs. Corp.*, *supra* at 3.

Ulysses argues that the email sent on February 8 was an agency-level protest because it expressed dissatisfaction with using DSIP and requested that the agency allow proposal submission via email. Resp. to Req. for Dismissal at 2-3. The full text of this email reads:

I wanted to inform you that there is a problem on the DSIP site and since you required submitters to go through that site I wanted to give you an idea of the level of support from [the support desk]. A lot of time and effort goes into putting these proposals together (not to mention the staff work getting the required memo signed) and [it is] totally unsatisfactory that the bureaucratic answer is if you have a problem with the website we require you to go through too bad. There should be a [backup] email to send [documents] to when your system doesn't function properly. My submission is 99% complete except I cannot upload the technical volume. I have been trying for over a day, there is no rush on the system right now according to the [support desk] so there must be a technical issue with the system.

AR, Tab 5, Email from Ulysses to Air Force, Feb. 8, 2022 (12:10 p.m.).

We find that this email is not an agency-level protest. The email does not include the information required by FAR section 33.103(d)(2); for example, it does not request specific relief or a ruling from the agency. *Compare American Material Handling, Inc.*, B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183 at 2-3 (finding protester's letter to be an agency-level protest when it recommended changes in the solicitation specifications and requested a response from the agency), *with Silver Investments, Inc.*, *supra* (concluding protester's letter was not an agency-level protest where it did not request a ruling or any specific relief from the agency), *and Masai Techs. Corp.*, *supra* (concluding an email was not an agency-level protest where it did not go beyond suggesting an idea and did not request the agency to take corrective action). Rather, the email states a suggestion that the agency have a backup email to submit proposals and does not specifically request that the agency establish an alternative submission process.

Accordingly, our timeliness rule at 4 C.F.R. section 21.2(a)(3) is inapplicable here. We therefore dismiss as untimely the protest ground contesting the DSIP submission

requirement because it challenges the clear terms of the solicitation and was filed after the date set for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

Finally, we decline to reach the merits of this protest ground under either the good cause or the significant issue exceptions to our timeliness rules. See 4 C.F.R. § 21.2(c). In order to prevent our timeliness rules from becoming meaningless, the exceptions to those rules are strictly construed and rarely used. *Fisher Sand & Gravel Co.*, B-417496, July 26, 2019, 2019 CPD ¶ 280 at 7 n.9. The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents it from filing a protest. See *Central Texas College*, B-245233.5, Feb. 6, 1992, 92-1 CPD ¶ 151 at 3. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community which we previously have not considered on the merits. *Hawker Beechcraft Def. Co., LLC*, B-406170, Dec. 22, 2011, 2011 CPD ¶ 285 at 4 n.4. Ulysses gives us no reason to conclude that the failure to timely protest the DSIP submission requirement was due to some compelling reason beyond its control, nor does it present any reason for us to conclude that the DSIP submission requirement reflects a significant issue to the procurement community. See Resp. to Req. for Dismissal at 3-4.

## DISCUSSION

Ulysses argues that the Air Force is required to consider its proposal for an award. Protest at 13; Comments at 2. The agency argues that Ulysses failed to submit a complete proposal to the proper place by the proper time, and therefore the agency's decision not to consider Ulysses's proposal was reasonable. Memorandum of Law (MOL) at 22. Based on our review of the record, we deny the protest.<sup>8</sup>

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<sup>8</sup> The protester raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provide a basis to sustain the protest. For example, Ulysses argues that the contracting officer's decision to deny the agency-level protest amounted to arbitrary and capricious agency action under the Administrative Procedure Act (APA). Protest at 14; Comments at 11-13; see 5 U.S.C. § 706(2)(A) (scope of review under the APA). The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Honeywell Tech. Sols., Inc.*, B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. Our Office does not review agency action under the APA, nor does our Office function as an appellate forum to review protest decisions issued by agency officials. See 31 U.S.C. §§ 3551-3554. Accordingly, we find that Ulysses's challenge to the contracting officer's decision on the agency-level protest fails to state a valid basis of protest and is dismissed. 4 C.F.R. §§ 21.1(c)(4), (f); *id.* § 21.5(f).

## The Air Force's Decision not to Consider Ulysses's Proposal was Reasonable

As explained above, Ulysses prepared a proposal and unsuccessfully attempted to submit it via DSIP. The parties do not dispute that prior to the time set for receipt of proposals, Ulysses uploaded to DSIP all of its proposal volumes except for the technical volume and that the technical volume was emailed to the DSIP support desk. Under the undisputed facts, Ulysses did not timely submit its proposal as required by the solicitation. Therefore, the issue we must decide is whether the agency was obligated to accept Ulysses's proposal where, prior to the submission deadline, parts of the proposal were uploaded to DSIP and the remaining part was emailed to the DSIP support desk. Our conclusion focuses on the proposal volumes uploaded to DSIP; as discussed below, Ulysses never relinquished control of those volumes by submitting a complete proposal through DSIP.

It is an offeror's responsibility to deliver its proposal to the proper place by the proper time, and through the method authorized in the solicitation. *Spanish Sols. Language Servs., LLC*, B-418191, Jan. 2, 2020, 2020 CPD ¶ 20 at 4 (proposal deemed late where it was not received at the proper place by the proper time); *Onsite OHS*, B-406449, May 30, 2012, 2012 CPD ¶ 178 at 4 (proposal properly excluded from consideration because it was not submitted using the method authorized by the solicitation). In challenging an agency's decision not to consider a proposal where the agency has concluded that the proposal was not delivered to the proper place by the proper time, a protester has the burden of proving that its proposal was properly submitted and delivered. See *ManTech Advanced Sys. Int'l., Inc.*, B-414985, Oct. 20, 2017, 2017 CPD ¶ 324 at 3-4. An agency is not required to consider a proposal where the record supports a conclusion that the proposal was not actually received. *Id.*; *Tele-Consultants, Inc.*, B-414135, Feb. 27, 2017, 2017 CPD ¶ 132 at 5 (proposal was not actually submitted where it was uploaded as a draft to the online submission portal but the offeror did not engage the "Submit Signed Proposal" button); see also *Johnson Controls Gov't. Sys., LLC*, B-411862.2, Nov. 24, 2015, 2015 CPD ¶ 357 at 4-5.<sup>9</sup>

According to Ulysses, the manner in which it submitted its proposal was a "minor matter of form [versus] substance" and that consistent with GAO decisions on these issues, its proposal must be accepted and considered. Comments at 3-4. The Air Force argues that even if it could properly accept the technical volume emailed to the support desk--which it does not concede--the portions of Ulysses's proposal that were uploaded to DSIP were never actually submitted, and therefore Ulysses retained "the ability to alter, revise, or otherwise modify its proposal after the proposal submission deadline." MOL at 18. To this point, both parties recognize that DSIP will not allow an offeror to complete proposal submission until all required volumes are uploaded to DSIP and the

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<sup>9</sup> Because SBIR procurements are conducted pursuant to 15 U.S.C. § 638 and applicable SBIR policy guidance, they are not governed by FAR part 15 or the late proposal provisions set forth under FAR section 15.208. See *Squire Sols.*, B-419477.2, June 10, 2021, 2021 CPD ¶ 229 at 4 n.3 (dismissing allegations that FAR part 15 provisions applied to SBIR procurement).



offeror transmits the proposal. See *id.* at 18; Protest at 5 (“The system would not allow a user to certify and submit a proposal where any of the seven main sections were not complete and certified individually.”); see also AR, Tab 11, Affidavit of Support Desk Manager at ¶ 3 (“Where an offeror does not complete its proposal submission but still uploads documents to DSIP, the entire proposal and all associated documents are still entirely in that offeror’s control”).

Under these facts, we conclude that the agency’s decision not to accept Ulysses’s proposal was reasonable. Ulysses failed to deliver its proposal to the proper place by the proper time. The complete proposal was never submitted through DSIP. As all parties recognize, until an offeror uploads all required volumes to DSIP and transmits the proposal, the offeror retains custody of the proposal. Ulysses uploaded five proposal volumes to DSIP but never transmitted those volumes to the agency; therefore Ulysses never submitted its proposal. Since Ulysses did not submit its proposal, we find reasonable the agency’s decision not to consider the proposal. See *ManTech Advanced Sys. Int’l., Inc., supra*; *Tele-Consultants, Inc., supra*. Accordingly, this protest ground is denied.<sup>10</sup>

#### The Solicitation Does Not Allow for Late Proposal Submission

Ulysses argues that the CSO allows for the submission of proposals after the submission deadline has passed and until the time the agency starts to evaluate proposals. Protest at 18-19; Comments at 9-11. Based on its interpretation of the solicitation, Ulysses contends that the Air Force must allow the firm another opportunity to submit its proposal. Protest at 19. Of note, Ulysses does not contest the fact that the solicitation includes a closing date. Comments at 9. The protester’s position is that the closing date alone does not preclude the agency from accepting and considering proposals submitted after that date because the solicitation does not contain “an express clause stating that proposals would not be considered after the due date.” Protest at 18-19; Comments at 9-10.

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<sup>10</sup> The protester also contends that its submission was improperly blocked by a firewall. Protest at 9-10; Comments at 7-8. The agency did not address the firewall allegation. However, the evidence in the record strongly suggests that the issue was due to a flaw in Ulysses’s electronic file. The Air Force has produced the sworn affidavit of the DSIP support desk manager affirming that DSIP was functioning normally during the time period at issue, and that the agency received 667 timely proposals. AR, Tab 11, Affidavit of Support Desk Manager at ¶¶ 15-17. The support desk manager attests that Ulysses was the only offeror to report a technical problem prior to the submission deadline that was ultimately unable to submit a proposal. *Id.* ¶ 15. The support desk manager attests that in order to rule out system latency, after the proposal submission deadline had passed, support desk personnel tried to upload Ulysses’s technical volume to DSIP--the upload again failed. *Id.* ¶ 12. Thus, the record supports a conclusion that the technical issue preventing the upload of Ulysses’s technical volume was the result of Ulysses’s file, and not DSIP.

We reject the protester's argument. First, the solicitation expressly warned firms that there would be "no exception" to the proposal submission deadline. CSO at 1. Thus, notwithstanding its assertions to the contrary, the face of the solicitation put Ulysses on notice that the agency would not consider proposals that failed to meet the stated solicitation deadline. Second, Ulysses cites a standard that applies to requests for quotations; it is not applicable to solicitations like the one here which request proposals. Accordingly, we find that the protester's interpretation is unreasonable because it is based on a misunderstanding of law. The solicitation here requests proposals and does not allow the agency to accept proposals submitted after the established due date.<sup>11</sup> *Id.* This protest ground is denied.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>11</sup> Our previous decisions explain that absent a solicitation provision expressly requiring quotations to be received by a specified closing date, solicitation language requesting quotations by a certain date does not establish a firm closing date. See e.g., *Robertson & Penn, Inc., d/b/a Cusseta Laundry*, B-417323, May 16, 2019, 2019 CPD ¶ 194 at 3-4. The same principle does not apply to solicitations requesting proposals. See *Washington Coach Corp.*, B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4-5; *Onsite OHS, supra*; *Asset Protection & Sec. Servs., LP*, B-406474.2, July 17, 2012, 2012 CPD ¶ 210 at 2 n.1.