



Decision

Matter of: Spanish Solutions Language Services, LLC

File: B-418191

Date: January 2, 2020

Marcela Lopez, for the protester.
Michael G. Anderson, Esq., and Elizabeth E. Urrutia, Esq., Department of Defense, Washington Headquarters Services, for the agency.
Andrew J. Smith, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal received after the submission deadline was late and therefore ineligible for consideration where the request for proposals included the late submission provision set forth in Federal Acquisition Regulation provision 52.212-1(f)(2)(i).

DECISION

Spanish Solutions Language Services, LLC, a small business of North Miami, Florida, protests the award of a contract to Human Touch Translations under request for proposals (RFP) No. HQ0034-19-R-0355, which was issued by the Department of Defense (DoD), Washington Headquarters Services, for translation services. Spanish Solutions argues that its proposal was not late and that the agency unreasonably found its proposal technically unacceptable.

We deny the protest.

BACKGROUND

On September 17, 2019, the Washington Headquarters Services issued the RFP pursuant to the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) parts 12 and 13. Agency Report (AR), Tab 1, RFP at 1; AR, Tab 10, Contracting Officer's Statement (COS) at 1. The RFP sought proposals to provide Arabic, French, and Russian translation services to support a strategic planning seminar in Northern Virginia and Washington, D.C., from October 21 to November 1. RFP at 23-24, 27. The RFP contemplated the award of a fixed-price contract to the offeror that submitted the lowest-priced, technically acceptable proposal, considering

the following three evaluation factors: technical capability and approach, past performance, and price. RFP at 20.

Of relevance here, the RFP included FAR provision 52.212-1, Instructions to Offerors--Commercial Items, which provided the following terms regarding late proposals:

(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

(C) If this solicitation is a request for proposals, it was the only proposal received.

FAR provision 52.212-1(f)(2)(i); see RFP at 17-18.

Proposals were due by 11:00 a.m. on September 23.¹ AR, Tab 7, FBO RFP Notice at 1; COS at 1. On September 23, the contract specialist, who was identified as the primary point of contact in the RFP, received Spanish Solutions’ proposal after the 11:00 a.m. deadline for proposals. COS at 2; AR, Tab 3, Email from Protester to Agency, Sept. 23, 2019, at 1; AR, Tab 9, Information Technology Specialist (ITS) Declaration, at 1. Although the proposal was received after the deadline for receipt of proposals, the agency nonetheless evaluated Spanish Solutions’ proposal, finding it

¹ The RFP required submission of proposals by 2:00 p.m. on September 20, but the RFP notice, published on the FedBizOpps website, required proposals to be submitted by 11:00 a.m. on September 23. RFP at 1; AR, Tab 11, Memorandum of Law (MOL) at 1. The parties agree that the later submission deadline of 11:00 a.m. on September 23 was the final deadline applicable for this competition. MOL at 1; Protest at 2; Protester’s Response to Req. for Dismissal at 2.

technically unacceptable for failing to include a final list of interpreters.² COS at 3; Protester's Response to Req. for Dismissal, exh. D, Email from Agency to Protester, Oct. 3, 2019, at 1. On September 26, the agency awarded the contract to Human Touch Translations for \$53,560.00. COS at 3. This protest followed.

DISCUSSION

Spanish Solutions challenges the agency's evaluation of its proposal. In this regard, Spanish Solutions contends that it timely submitted its proposal and that its proposal met all of the RFP's technical requirements, including providing the required list of interpreters.³ Protest at 2-4. Regarding the timeliness of its proposal, Spanish Solutions asserts that the copy of the email it sent to the agency transmitting its proposal demonstrates that it sent its proposal at 10:54 a.m. on September 23, six minutes before the deadline. Response to Req. for Dismissal, exh. E, Email from Protester to Agency, Sept. 23, 2019, at 1.

In response, the agency argues that Spanish Solutions' proposal should not have been evaluated because it was late, thereby rendering it ineligible for award.⁴ COS at 3; MOL at 3-6. In support of its position, the agency cites to FAR provision 52.212-1(f)(2)(i), which was included in the solicitation and established that proposals must be received by the submission date and time in order to be considered. Id. 1-2. According to a member of the DoD email operations team who reviewed the email records, the DoD email gateways did not receive the protester's email containing its proposal until 11:04 a.m. on September 23, four minutes after the deadline for receipt of proposals. AR, Tab 9, ITS Declaration, at 1; Tab 3, Email from Protester to Agency, Sept. 23, 2019, at 1. The agency contends that the DoD email logs show that the contract specialist, who was the agency representative designated in the solicitation to receive proposals, did not receive the protester's proposal until 11:08 a.m. AR, Tab 9, ITS Declaration, at 1.

The agency argues that none of the exceptions allowing consideration of a late proposal listed in FAR provision 52.212-1 apply. First, the agency argues that the protester's

² The agency indicated that it "improperly" evaluated Spanish Solutions' late proposal and only discovered its error in a subsequent review of its email records. COS at 2.

³ The protester presented arguments that are in addition to, or variations of, those discussed below. While we do not discuss all of the protester's arguments, we have considered them all and find none provide a basis to sustain the protest.

⁴ No protective order was issued in this matter because Spanish Solutions proceeded with its protest without counsel. A full version of the AR was provided to our Office, while a redacted version was furnished to the protester. We have reviewed the entire record. As much of the information reviewed by our Office is source selection sensitive or proprietary in nature, our discussion of some aspects of the procurement is necessarily general in nature.

proposal was not received at the initial point of entry to the government's infrastructure by 5:00 p.m. the day prior to the date specified for receipt of proposals. MOL at 5. Next, the agency argues that the government control exception in FAR provision 52.212-1(f)(2)(i)(B) does not apply to electronically submitted proposals. Id., citing Sea Box, Inc., B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3. Finally, the agency argues that Spanish Solutions' proposal was not the only proposal received nor was it a modification of a previously submitted proposal under FAR provision 52.212-1(f)(2)(ii). MOL at 5.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. See FAR provision 52.212-1(f)(1); Washingtonian Coach Corp., B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4. We have previously found that proposals received after the submission deadline are late and cannot be accepted--except in certain exceptions not applicable here--when a solicitation contains the late submission provisions set forth in FAR provision 52.212-1(f)(2)(i). See Washingtonian Coach Corp., supra; see also Robertson & Penn, Inc., dba Cusseta Laundry, B-417323, May 16, 2019, 2019 CPD ¶ 194 at 3 n.3 (finding no merit to the argument that the agency waived the submission deadline by not rejecting the late quotation or advising the firm of its determination that it was ineligible, when the solicitation contained FAR provision 52.212-1); see also M. Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3-4 (sustaining a protest in which the agency considered a late quotation, even after discussions, when the solicitation contained FAR provision 52.212-1). This rule, while it may seem harsh, 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 Washingtonian Coach Corp., supra at 4.

Here, we find that the agency reasonably determined that Spanish Solutions' proposal was late. Spanish Solutions contends that it transmitted its proposal by email approximately six minutes prior to the deadline and should not be considered late. However, it is 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. See Washingtonian Coach Corp., supra at 4. Thus, even if we assume that Spanish Solutions sent the email containing its proposal minutes before the deadline, the relevant question under FAR provision 52.212-1(f)(2)(i) is when the email was received at the designated government office, not when it was sent. Sea Box, Inc., supra at 3. Here, Spanish Solutions' proposal was not received by the contract specialist at the time designated for the receipt of proposals but was instead received approximately eight minutes late. Further, because 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. See FAR provision 52.212-1(f)(2)(i)(A); see id.; Washingtonian Coach Corp., supra at 4.

Because Spanish Solutions' proposal was late and therefore ineligible for award, it is not an interested party to challenge the agency's subsequent evaluation and award decision. A protester is not an interested party where it would not be in line for contract award were

its protest to be sustained. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. We therefore dismiss its challenge to the agency's evaluation of its proposal.

The protest is denied.

Thomas H. Armstrong
General Counsel