

THE LATE OFFER RULE DOES NOT APPLY TO QUOTATIONS

Copyright 2018, Richard Lieberman, Consultant and Retired Attorney

The general rule in government procurement is that when a contractor submits an offer, it must be on time as stated in the solicitation. With very limited exceptions, “late is late” and the offer generally may not be considered. This is reflected in the three Federal Acquisition Regulation (“FAR”) sections dealing with instructions to offerors:

- FAR 52.212-1(2), Instructions to Offerors-Commercial Items (for use in Commercial Item procurements);
- FAR 52.214-7(b), Late Submissions, Modifications, and Withdrawals of Bids (for use in Sealed Bidding); and
- FAR 52.215-1(c)(3), Instructions to Offerors, Competitive Acquisition (for use in Negotiated Procurement).

All three FAR sections contain virtually identical language that “[A]ny offer, [bid or proposal], 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 [very limited exceptions].” This is the “late is late” rule and it is quite clear.

However, the procedures on Requests for Quotations (“RFQs”) and Quotations received in response to RFQs, such as for Task Order competitions or competitions under the Federal Supply Schedules, are different, and use different timeliness rules. That is why the late offer rule does not apply to them.

In the FAR, when a contractor submits either a “bid” or a “proposal,” that document is an “offer” that can be accepted by the government to form a contract. However, when an agency solicits “quotations” (“quotes”), the quotations have a different legal effect. FAR 13.004 states that

A quotation is not an offer, and consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier’s quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services. A contract is established when the supplier accepts the offer [by indicating acceptance to the government in writing] or by furnishing supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

So the lateness rules for bids and proposals do not apply to solicitations for quotations, as demonstrated in a recent Government Accountability Office (“GAO”) bid protest, *PricewaterhouseCoopers Public Sector, LLP*, B-415504, Jan. 18, 2018 (“PWC”). Here the agency sought Information Technology Services under a government-wide acquisition contract for the Department of Homeland Security. The agency issued a Request for Quotations (“RFQ”) for the work. PWC protested that the agency should have rejected a quote from the winning

contractor, BAE Systems Technology Solutions & Services, Inc. (“BAE”), because it was submitted 30 minutes after a 12 noon deadline. The agency had granted BAE a 30-minute extension because of “outages” in its office. Neither the solicitation nor the request for the final quotes stated that late submissions would not be considered.

GAO denied the protest, stating that it is well established that the standard for late proposals does not generally apply to requests for quotations. GAO noted the difference between offers (bids and proposals) and quotations. GAO further stated that “language in an RFQ...cannot be construed as establishing a firm closing date for receipt of quotations, absent a late quotation provision expressly providing that quotations must be received by that date to be considered. Agencies should thus consider any quotations received prior to source selection if no substantial activity has transpired in evaluating quotations and other vendors would not be prejudiced.”

GAO found no prejudice, because the extra 30 minutes given to BAE did not involve any substantial evaluations and allowing BAE’s quotation to be considered had no impact on federal laws or regulations.

**For other helpful suggestions on government contracting, visit:
Richard D. Lieberman’s FAR Consulting & Training at <https://www.richarddlieberman.com/>, and
Mistakes in Government Contracting at <https://richarddlieberman.wixsite.com/mistakes/>.**