



Decision

Matter of: Warrior Service Company

File: B-417491

Date: May 13, 2019

Frank V. Reilly, Esq., Frank V. Reilly Attorney at Law, for the protester.
Kathleen Ellis, Esq., Department of Veterans Affairs, for the agency.
Sarah T. Zaffina, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging alleged improprieties in a solicitation is dismissed as untimely where the protest was not filed before the time set for receipt of quotations, even though in this instance, the solicitation required that vendors respond five days after issuance of the request for quotations, and the protest was filed within ten days of when the solicitation was issued; while our Office has recognized an exception to the requirement to challenge alleged solicitation improprieties in cases where an agency has used an extremely limited response time, our prior cases do not support the use of this exception when a vendor has five days before quotations are due, and thus five days to file any protest challenging the terms of the solicitation.

DECISION

Warrior Service Company (WSC), of Valley Stream, New York, a service-disabled veteran-owned small business (SDVOSB), protests the time to submit quotations allotted by the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. 36C24419Q0515 for commercially available off-the-shelf (COTS), brand name or equal, Carendo Shower Chairs. The protester argues that the RFQ did not provide enough time to prepare a quotation and the brand name or equal requirement unduly restricts competition.

We dismiss the protest as untimely.

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 3-4. 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 quotations be filed before that time. 4 C.F.R. § 21.2(a)(1); CTIS Inc., B-414852, Oct. 3, 2017, 2017 CPD ¶ 309 at 5 n.7; see AmaTerra Env'tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

Here, the solicitation was issued on April 3, 2019, and it required vendors to submit quotations by April 8, 2019. Req. for Dismissal, Exh. 1, RFQ at 1. Six vendors submitted quotations prior to the RFQ closing. Req. for Dismissal at 2. WSC submitted its protest, alleging improprieties in the solicitation, on April 15, 2019. Protest at 1. Accordingly, the agency asserts that the protest alleging solicitation improprieties is clearly untimely because it was not filed before the RFQ closing. Req. for Dismissal at 2-3. We agree.

WSC contends, however, that the VA cannot shorten the solicitation response time such that the 10 day time period to file a protest at GAO is eliminated. Resp. to Req. for Dismissal at 2. WSC argues that our Office has recognized an exception to our timeliness rules when, as a result of extremely limited time periods, circumstances do not permit filing a protest before the solicitation closes. Id. at 3 (citing The Big Picture Company, B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166). In The Big Picture Company, we found that the protester did not have a reasonable opportunity to file a protest when the protester had not received the amendment containing the alleged defects until one day before bid opening. The Big Picture Co., supra, at 2. Specifically, in that circumstance, we stated, "since Big Picture did not receive the amendment until 1 day before bid opening, we believe that [section] 21.2(b)(1) is inapplicable because Big Picture did not have a reasonable opportunity to file its protest before bid opening." Id. (citing to a provision of an earlier version of our Bid Protest Regulations). WSC asserts this exception should apply here, and its protest--filed 10 days after the RFQ was posted--is timely. Resp. to Req. for Dismissal at 3.

We conclude that applying the exception is not appropriate in this instance. In order to prevent our strict timeliness rules from becoming meaningless, exceptions are strictly construed and rarely used. WareOnEarth Commc'ns, Inc., B-298408, July 11, 2006, 2006 CPD ¶ 107 at 3. The cases where we have determined that a vendor did not have a reasonable opportunity to protest solicitation terms, and thus applied the exception WSC advocates, are those where the protester faced an extremely limited timeframe within which to challenge the solicitation provisions at issue, such as the case in The Big Picture Company. See, e.g., Eastern Forestry, B-411848, Nov. 9, 2015, 2015 CPD ¶ 348 at 2, 4 (protester learned basis for protest from an amendment posted at 7:00 p.m. the night before bid opening at 10:00 a.m. the following day); Dube Travel Agency & Tours, Inc.; Garber Travel, B-270438, B-270438.2, Mar. 6, 1996, 96-1 CPD ¶ 141 at 6 n.7 (amendment not received until one day before proposals were due); Skyline Indus., Inc., B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 3 (time for receipt of proposals was "practically simultaneous with solicitation itself"); Ling Dynamic Sys., Inc., B-252091, May 24, 1993, 93-1 CPD ¶ 407 at 3 (protester learned basis for challenging solicitation only two hours before bid opening); G. Davidson Co., Inc., B-249331,

July 14, 1992, 92-2 CPD ¶ 21 at 2 n.1 (concluding that 2 hours and 45 minutes was not a reasonable period of time within which to file a protest); Bardes Servs., Inc., B-242581, Apr. 29, 1991, 91-1 CPD ¶ 419 at 3 (protest before proposals were due was not feasible when protester was informed of basis of protest only one day before proposals were due); ImageMatrix, Inc., B-243170, Mar. 11, 1991, 91-1 CPD ¶ 270 at 1-2 (protester did not receive amendment until one day before proposals were due).

Here, the RFQ was posted on Wednesday, April 3, 2019 and WSC had five calendar days before quotations were due on Monday, April 8, 2019. In other cases we have found that a shorter time period--two or three days--prior to a bid or proposal closing date afforded vendors a reasonable opportunity to file a protest challenging the terms of a solicitation. See, e.g., WareOnEarth Comms., Inc., supra, at 4; (two working days is a reasonable opportunity to file a protest); Concepts to Operations, Inc., B-248606, Sept. 10, 1992, 92-2 CPD ¶ 164 at 2 (three calendar days, one business day, is sufficient time to file protest); Mobile/Modular Express, B-246183, Nov. 13, 1991, 91-2 CPD ¶ 459 at 2-3 (two days is a reasonable period of time to file protest); Pacific Instruments, Inc., B-228274, Oct. 21, 1987, 87-2 CPD ¶ 380 (“only 2 working days,” as argued by protester, is a reasonable opportunity to file protest); Cybermedic, B-200628, May 19, 1981, 81-1 CPD ¶ 380 at 3 (two days is reasonable); Clarke & Lewis, Inc., B-196954, Jan. 8, 1980, 80 1 CPD ¶ 24 at 1-2 (two days is sufficient time in which to file protest); see Irvin Indus., Inc., B-187849, Mar. 28, 1977, 77-1 CPD ¶ 217 at 2 (two days is reasonable period of time to file protest).

Under these circumstances, we find no compelling reason to apply the exception to our timeliness rules. In order to be timely, WSC was required to file its protest, alleging defects in the solicitation, prior to the time set for receipt of quotations. 4 C.F.R. § 21.2(a)(1).

The protest is dismissed.

Thomas H. Armstrong
General Counsel