

IS AN AGENCY MAKING A MISTAKE BY ALLOWING ONLY 44 MINUTES TO RESPOND TO A SOLICITATION?

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You may think that allowing offerors only 44 minutes to respond to a solicitation for quotations is too short a time, but the Government Accountability Office (“GAO”) held that it was acceptable where emergency circumstances in connection with inclement weather warranted the short response time. *AeroSage, LLC*, B-415893, 4, April 17, 2018.

The Defense Logistics Agency (“DLA”) was procuring diesel fuel to meet Department of Veterans Affairs (“VA”) fuel requirements for a VA Medical Center. After issuing a “sources sought” email on January 4, 2018, the VA assessed whether the diesel heating fuel could be placed under a long-term DLA contract for another VA medical center, but concluded that it could not. However, VA and DLA concluded that DLA could place the order as a one-time spot purchase. The DLA contracting officer sent out a Request for Quotation (“RFQ”) at 8:46 AM on January 5, 2018, and requested that the quotations be submitted by 9:30 AM on the same day—approximately 44 minutes after DLA issued the RFQ.

Aerosage protested because it didn’t see the email transmitting the RFQ until 10:50 AM on January 5th—past the response time—and had no opportunity to submit a quote.

FAR 5.203(b) requires that the contracting officer establish response times “that will afford potential offerors a reasonable opportunity to respond to each proposed contract action...” The GAO noted that a reasonable response time depends on the circumstances of the acquisition (complexity, commerciality, availability and urgency). DLA stated that the VA medical center was in dire need of the diesel fuel because the local electric and gas utility mandated that the VA avoid use of natural gas to heat the building due to high demand for natural gas during an expected storm. The GAO concluded that 44 minutes for submission of quotations was “not unreasonable under the circumstances” based on this emergency requirement. GAO noted that AeroSage had been placed on notice by the sources sought notice, and had a reason to expect further correspondence about this procurement but did not check, and did not read its own email until an hour and twenty minutes past the time due. The GAO concluded that the RFQ’s 44 minute response time complied with FAR 5.203(b) *in this case, but noted that the decision was limited to the circumstances in this particular record.*

The Takeaway: It’s difficult to show to the GAO that there is inadequate time to respond to a solicitation. Any protester must address all factors noted (complexity, commerciality, availability and urgency). This is particularly difficult where there is an emergency need, such as this VA Medical Center case.

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