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Strict Means Strict When It Comes to Pennsylvania Bid Submissions

Recently, in *Center for Climate Strategies v. Department of Environmental Protection* (http://www.pacourts.us/assets/opinions/Commonwealth/out/594CD17_9-24-17.pdf?cb=1), the Pennsylvania Commonwealth Court determined that a bidder for a Pennsylvania government contract must comply with every requirement in the solicitation – even the seemingly trivial ones. Failing to do so can lead to the severe consequence of disqualification.

In *Center for Climate Strategies*, an agency solicited bids on a contract to help update a climate change plan. In the solicitation, the agency told bidders that responses “will only be accepted electronically” through a specific website.

A half hour before the submission deadline, a bidder called the website help line in apparent panic. The bidder could not find its website password because its website contact person no longer worked there. A representative told the bidder to request a password and contact change by email. The bidder did so before the deadline. But it does not appear it received a response in time for it to reset its website information and submit through the site.

So with three minutes to go before the submission deadline, the bidder instead emailed its bid materials to three department employees involved with the solicitation. The bidder did so as “a failsafe measure” because it “encountered challenges” with submission on the website.

The department still rejected the bid because the bidder did not submit it through the website. The bidder protested, claiming the department should have accepted its submission because the bidder made a reasonable effort to comply.

The department denied the protest, and the Commonwealth Court affirmed. The court explained that when specifications are mandatory, “they must be strictly followed for the bid to be valid.” Here, the solicitation documents “specified the exact electronic solicitation method.” They also used words like “only” and “must” to describe that requirement. This led the court to conclude the agency properly disqualified the bid “regardless of the timely submission of its bid through a different electronic submission method.”

Center for Climate Strategies teaches us two lessons. First, bidders must comply with every mandatory requirement in a procurement document – no matter how minor or clerical. Second, bidders should not wait until the last minute to submit their procurement responses – or, at least, should prepare well in advance to ensure

the submission process goes smoothly. By learning and applying these important lessons, bidders can avoid the unfortunate outcome for the bidder in *Center for Climate Strategies*.



Karl S. Myers represents government entities and contractors in governmental litigation matters, including proceedings involving the Pennsylvania Right-to-Know Law, bid protests, and state constitutional disputes. For more information, please contact Karl at 215.564.8193 or kmyers@stradley.com.

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