



# Decision

**Matter of:** DataSavers of Jacksonville, Inc.

**File:** B-415113.3

**Date:** August 24, 2018

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Michael Lombardi, for the protester.

Daniel R. Forman, Esq., James G. Peyster, Esq., Olivia L. Lynch, Esq., and Stephanie L. Crawford, Esq., Crowell & Moring LLP, for Iron Mountain Information Management, LLC, an intervenor.

Paul B. Oman, Esq., and Peter G. Hartman, Esq., Department of Homeland Security, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's evaluation of protester's quotation as technically unacceptable is denied where the evaluation was reasonable, consistent with the solicitation, and adequately documented.
2. Protest challenging an apparent solicitation defect--that a requirement was believed to be physically unattainable--is dismissed as untimely where the protester did not challenge the alleged defect prior to the due date for receipt of quotations.

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## DECISION

DataSavers of Jacksonville, Inc., a small business of Jacksonville, Florida, protests the issuance of a blanket purchase agreement (BPA) to Iron Mountain Information Management, LLC, of Boston, Massachusetts, under request for quotations (RFQ) No. HSHQDC-17-Q-00124, issued by the Department of Homeland Security (DHS) for off-site storage and records management services. DataSavers challenges the agency's evaluation of its quotation and resulting selection decision.

We dismiss the protest in part and deny the protest in part.

## BACKGROUND

The RFQ was issued on March 30, 2017, on an unrestricted basis and using the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding contracts under the General Services Administration's Federal Supply Schedule (FSS) No. 36 (The Office, Imaging & Document Solution).<sup>1</sup> Agency Report (AR), Tab 4.4.10, RFQ amend. 4, at 47. The RFQ contemplated the issuance of a BPA under which fixed-price and labor-hour orders could be placed for a base year with four 1-year options.<sup>2</sup> Id. In general terms, the contractor was to provide all management, labor, facilities, and materials necessary to perform the required document storage, transfer, tape archiving, transportation, security, retrieval, online access, document scanning/ digitization, disposition, and destruction services for DHS and its component agencies. Id. at 46; AR, Tab 4.4.11, Statement of Work (SOW) at 13-15. The RFQ established that BPA award would be made on a best-value tradeoff basis, based on five evaluation factors in descending order of importance: technical approach; management approach; past performance; price; and small business participation.<sup>3</sup> RFQ at 55.

Iron Mountain and DataSavers submitted quotations by the April 17 closing date. An agency technical evaluation team (TET) evaluated offerors' nonprice proposals using adjectival rating schemes. A separate price evaluation team (PET) assessed, but did not assign ratings to, vendors' price submissions. Based on its initial evaluation, the agency made BPA award to Iron Mountain on August 16. Contracting Officer's Statement at 2.

On August 18, DataSavers filed a protest with our Office challenging the agency's evaluation and award decision. On September 5, DHS decided to take corrective action by conducting a new evaluation and making a new selection decision and, in light thereof, DataSavers elected to withdraw its protest. The agency thereafter amended the solicitation, conducted discussions with vendors, and received revised quotations from Iron Mountain and DataSavers by the October 31 closing date.

By May 1, 2018, DHS completed its reevaluation, with the final evaluation ratings and prices of the Iron Mountain and DataSavers' quotations as follows:

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<sup>1</sup> The RFQ was subsequently amended four times. Unless stated otherwise, all citations are to the final version of the solicitation. For purposes of consistency we refer to the solicitation as an RFQ, the responding firms as vendors, and their responses to the solicitation as quotations.

<sup>2</sup> The solicitation also established that the maximum value of BPA orders is not to exceed \$65 million. Id.

<sup>3</sup> The small business participation factor applied only to large businesses. Id. at 59.

	<b>Iron Mountain</b>	<b>DataSavers</b>
<b>Technical Approach</b>	Outstanding	Unacceptable
<b>Management Approach</b>	Good	Acceptable
<b>Past Performance</b>	Outstanding	Neutral
<b>Price</b>	\$13,055,693	\$9,361,304
<b>Small Business Participation</b>	Outstanding	N/A

AR, Tab 6.2, Technical Evaluation Report, at 8; Tab 6.3, Price Evaluation Report, at 4.

Relevant to the protest here and as detailed below, the TET found DataSavers' technical approach to be unacceptable because of the vendor's failure to comply with the SOW requirements regarding the retrieval of records in "continuity of operations" situations. Id., Tab 6.2, Technical Evaluation Report, at 9.

The agency source selection authority (SSA) thereafter received and reviewed the TET and PET evaluation reports. The SSA agreed with the technical evaluators' findings, and concluded that Iron Mountain's quotation represented the overall best value to the government. Id., Tab 6.5, Source Selection Decision, at 4. After providing DataSavers with notice of BPA award and a brief explanation on May 17, this protest followed.

## DISCUSSION

DataSavers protests the agency's evaluation of its quotation and resulting award decision. The protester alleges that DHS's evaluation of its technical approach and price quotation was improper.<sup>4</sup> DataSavers also contends that the agency's best-value determination was improper, and that its quotation should have instead been selected for award. Although we do not address each of DataSavers' arguments, we have reviewed all the protester's arguments and find they do not provide any basis on which to sustain the protest.<sup>5</sup>

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<sup>4</sup> The protester was not represented by counsel who could obtain access to non-public information pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

<sup>5</sup> For example, DataSavers alleges that the agency's discussions were misleading and not meaningful. Protester's Comments at 2, 5. We find this protest ground to be untimely, as the protester knew or should have known of its basis of protest from the May 17 brief explanation, but did not raise this issue until July 2, more than 10 days later. See 4 C.F.R § 21.2(a)(2); Desbuild Inc., B-409009, Jan. 6, 2014, 2014 CPD ¶ 23 at 5 (protester knew of basis of protest grounds from its debriefing but did not timely raise them in its initial protest). DataSavers also alludes to the fact that Iron Mountain's divestiture of certain records management assets may affect the awardee's ability to perform. Protester's Supp. Comments at 6; see U.S. Department of Justice, Justice

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## Technical Approach Evaluation of DataSavers

DataSavers protests DHS's evaluation of its technical approach. The protester argues, among other things, that the determination of technical unacceptability was improper because the evaluation was unreasonable and inconsistent with the terms of the solicitation. Protest at 1-3.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

The RFQ established that the agency would evaluate the extent to which a vendor's technical approach effectively demonstrated the ability to successfully perform all SOW requirements, including those regarding record retrieval.<sup>6</sup> Id. at 56. The SOW established a continuity of operations (COOP) record retrieval requirement stating:

The Contractor shall accept and respond to requests for emergency support within 4 hours of the emergency request by Authorized Agency Continuity of Operations personnel or the legal custodian of Essential Records. This requirement is related only to emergency access to Essential Records . . . , during a government reconstitution or recover[y] event or exercise . . . .

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News, *Iron Mountain and Recall Holdings Agree to Divest Records Management Assets as a Condition to Proceed with Transaction*, Mar. 31, 2016 (<https://www.justice.gov/opa/pr/iron-mountain-and-recall-holdings-agree-divest-records-management-assets-condition-proceed>) (last visited Aug. 24, 2018). Since DataSavers was aware of or had access to this information before it filed its protest, and did not raise this matter until submitting its comments on the supplemental agency report on July 20, this issue is also untimely. See Desbuild Inc., supra.

<sup>6</sup> Similarly, the RFQ submission instructions informed vendors that quotations were required to fully demonstrate compliance with all SOW requirements. RFQ at 47, 49-51.

SOW at 14.

DataSavers, in its quotation, stated that it could print and hand-deliver an exact copy of a record to any DHS field office (or deliver by “Scan on Demand”) within 4 hours, and “then subsequently provide a hard copy [*i.e.*, original physical record] within a maximum of 24 hours.” AR, Tab 3.4.3, DataSavers Response to Discussion Questions, Oct. 30, 2017, at 2; see also Tab 3.4.1, DataSavers’ Revised Quotation, Vol. I, Technical Quotation, at 7-8. The agency evaluators found that DataSavers’ quotation failed to adequately address the SOW requirement for the delivery of records within 4 hours of COOP emergency requests. *Id.*, Tab 6.2, Technical Evaluation Report, at 9. Specifically, the TEP found the following:

As explained in para[graph] 5.1 of the SOW, the Agency’s records are in “various formats to include but not limited to Paper/Hardcopy materials; Electronic Media; and “Special Media.” In addition, as explained in para[graph] 5.5 of the SOW, these records can have various security consideration[s], *i.e.*[,] classified, confidential, etc. The proposed approach of scanning, copying and printing . . . is unacceptable because it does not account for the various formats and security considerations of essential records that may be requested for Continuity of Operations. This shows a fundamental misunderstanding of the Agency’s requirements and presents an unacceptable risk[,] making the technical approach unacceptable.

Id.

We find the evaluation of DataSavers’ technical approach to be proper. It is a vendor’s responsibility to submit a well-written quotation--with adequately detailed information which clearly demonstrates compliance with the solicitation requirements--for the agency to evaluate, and a vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably. See govSolutions, Inc., B-413166.3, Sept. 2, 2016, 2016 CPD ¶ 252 at 3-4; Recogniti, LLP, B-410658, Jan. 21, 2015, 2015 CPD ¶ 49 at 6.

As set forth above, the SOW established a physical record retrieval requirement of 4 hours in COOP situations. The agency evaluators reasonably found that DataSavers’ proposed approach--4 hours for a scanned copy or a print of the scanned copy of the record, and a maximum of 24 hours for the original physical record itself--neither indicated that it would meet the aforementioned COOP time requirement nor accounted for the various formats and security classification considerations of records that may be requested in COOP situations. The TEP also reasonably concluded that DataSavers’ noncompliant quotation presented an unacceptable risk to the agency. As a result, we find the agency’s evaluation here to be unobjectionable.

DataSavers does not dispute that its technical quotation failed to meet the COOP record retrieval time requirements. See Protest at 2. Rather, DataSavers maintains that the agency’s requirement was “unattainable and unreasonable.” *Id.*; see also Protester’s

Comments at 4. DataSavers also contends that inasmuch as the SOW requirement was “not physically possible,” the protester attempted in its quotation “to answer such requirements to the best of our ability” and “to propose a solution to an impossible directive.”<sup>7</sup> Protest at 2. We conclude that DataSavers essentially challenges an alleged defect in the solicitation that was admittedly apparent prior to the time for the submission of quotations.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of providing parties a fair opportunity to present their cases, and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Aurora Storage Prods., Inc., B-415628, Dec. 1, 2017, 2017 CPD ¶ 371 at 3. Under these rules, a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of quotations must be filed before that time. 4 C.F.R. § 21.2(a)(1); see Homecare Prods., Inc., B-408898.2, Mar. 12, 2014, 2014 CPD ¶ 98 at 4. Quite simply, a vendor cannot believe that a solicitation contains an unachievable requirement, sit by idly, and then challenge the ground rules for the procurement only after it does not receive award. As a result, DataSavers’ allegation that DHS’ requirement was “unattainable and unreasonable” is untimely and therefore dismissed.

#### Prejudice

DataSavers also protests other aspects of DHS’s evaluation of its quotation and resulting best-value determination. The protester alleges, for example, that the agency was biased against it and improperly considered the vendor’s pricing as part of the technical evaluation. Protest at 1-4. These protest grounds do not provide a basis to sustain the protest because the protester has not demonstrated prejudice. Prejudice is an essential element of every viable protest, and we will not sustain a protest where it is clear from the record that the protester suffered no prejudice as a result of an agency evaluation error. Investment Mgmt. Enter., B-410762, B-410762.2, Feb. 9, 2015, 2015 CPD ¶ 77 at 4. Where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice. Id. Here, even if the agency improperly evaluated DataSavers’ quotation in other regards, the fact remains that the agency reasonably found DataSavers’ quotation to be technically unacceptable because of its inadequate COOP record retrieval approach. Inasmuch as DataSavers was ineligible for award, it follows that DataSavers was not prejudiced by these alleged evaluation errors. See Franzosini

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<sup>7</sup> In support thereof, DataSavers points to the distances between certain DHS field offices and the existing commercial storage facilities that are approved for handling government records. DataSavers Response to DHS Dismissal Request at 3. The agency argues that the COOP record retrieval requirement is an achievable one--as long as a vendor did not limit itself to existing, government-approved commercial storage facilities. Memorandum of Law at 6-7.

Sud S.R.L., B-415009, Oct. 27, 2017, 2017 CPD ¶ 327 at 6. Consequently, the remaining aspects of DataSavers' protest allegations are denied.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong  
General Counsel