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# Decision

**Matter of:** Guidehouse Inc.

**File:** B-422115.2

**Date:** January 19, 2024

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Sarah T. Zaffina, Esq., and Evan D. Wesser, 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 decision not to consider the vendor's quotation is denied where the quotation was not timely received by the agency in a manner consistent with the terms of the solicitation.
  2. Protest challenging the agency's best-value determination is dismissed where the agency reasonably determined that the vendor's late quotation was ineligible for award, and therefore, the vendor is not an interested party to challenge the agency's evaluation.
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## DECISION

Guidehouse Inc. of McLean, Virginia, protests the award of a contract to Kearney & Co., P.C. (Kearney) of Alexandria, Virginia, under request for quotations (RFQ) No. HM0476-23-Q-0004, issued by the National Geospatial-Intelligence Agency (NGA) for audit management and support services. Guidehouse alleges that NGA unreasonably rejected its quotation when part of its final quotation revision (FQR) was not delivered to the designated agency email inbox. Guidehouse also contends that the agency's evaluation of quotations and best-value determination were unreasonable.

We deny the protest.

## BACKGROUND

On December 1, 2022, the NGA issued the RFQ under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding General Services Administration (GSA) federal supply schedule contracts to procure audit management and support services for NGA's financial management offices. Agency Report (AR), Tab A.2.a., RFQ amend. 1, Performance Work Statement (PWS) at 3; see also Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3.<sup>1</sup> The RFQ, issued on an unrestricted basis, anticipated the issuance of a primarily fixed-price task order for a 12-month base period and four 12-month option periods to the vendor whose quotation was determined to be the best value.<sup>2</sup> AR, Tab A.4., RFQ amend. 3 at 9, 16.

The RFQ provided that the agency would conduct a tradeoff between three evaluation factors: (1) technical/management; (2) past performance; and (3) price. *Id.* at 16. Two other evaluation criteria--small business participation plan (SBPP) and security--would be evaluated on a "pass/fail" basis. *Id.* Any quotation receiving a "fail" rating for either the SBPP or security factors would be ineligible for award. *Id.*

The RFQ also described detailed instructions for preparing and submitting quotations. *Id.* at 9-16. The RFQ further cautioned vendors that "[i]f one or more quote volumes are received after the time and date specified in the RFQ for quote submission, the [o]fferor's entire quote will be considered late and will not be evaluated or considered for award." *Id.* at 10.

Four vendors, including Guidehouse, timely submitted quotations, and in June 2023, after evaluating initial quotations, NGA engaged in exchanges with all vendors. COS/MOL at 17; AR, Tab G.4.j., Guidehouse Exchanges. As relevant here, Guidehouse received a "fail" rating for its SBPP because its quotation did not include a historically under-utilized business zone (HUBZone) subcontractor as part of its team, and did not explain why Guidehouse was unable to meet required NGA HUBZone goals as stated in the RFQ. AR, Tab G.4.j., Guidehouse Exchanges at 2.

Subsequently, NGA closed exchanges and issued amendment 3, which, among other things, required final quotation revisions (FQRs) to be submitted electronically to the contract specialist, provided his email address, and advised that quotations receiving "fail" ratings for the SBPP and security factors would not be considered for award. See *id.* at 3; RFQ amend. 3 at 1, 10, 16. FQRs were due no later than 8:00 a.m. on June 21. RFQ amend. 3 at 1. NGA also instructed vendors to submit only volumes changed in response to exchanges. AR, Tab G.3.d., Email from Guidehouse to NGA, June 20, 2023 (11:07 a.m.) (acknowledging receipt of agency email).

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<sup>1</sup> The RFQ was amended three times. We cite to the last amended solicitation unless otherwise noted.

<sup>2</sup> The solicitation also included cost-reimbursable line items for travel. RFQ amend. 3 at 4-7, 9.

NGA reports that on June 20, before the deadline for receipt of FQRs, it received five separate emails from Guidehouse. Four of the emails included a single FQR volume in the email (volumes I, II, V, and VI), including attachments required for each volume, and the fifth email included passwords to access quotation volume V, Security; each email transmitting Guidehouse's FQR volumes also requested that the contracting officer confirm receipt of the email.<sup>3</sup> COS/MOL at 12-13. On June 22, after the deadline for FQRs expired, the contract specialist confirmed receipt of each of the four emails with the FQR volumes described above; the contract specialist did not send a confirmation email to Guidehouse for the email containing passwords because Guidehouse did not request confirmation for that email. *Id.* at 13; *see also* AR, Tabs G.4.a.-G.4.d., Emails from Contract Specialist to Guidehouse, June 22, 2023.

Guidehouse reports that on June 20, at 11:03 p.m. and 11:06 p.m., Guidehouse sent two emails with volume IV of its FQR, which included its revised SBPP, to the agency's designated recipient, the contract specialist.<sup>4</sup> Protest at 6-8; *see also* Protest exh. 4, Declaration of Guidehouse IT Security Manager (refencing attached email server records for the outbound email from Guidehouse to the contract specialist); Protest exh. 5, Email from Guidehouse to NGA, June 20, 2023 (11:03 p.m.); Protest exh. 6, Email from Guidehouse to NGA, June 20, 2023 (11:06 p.m.). NGA maintains, however, that the contract specialist never received emails from Guidehouse with FQRs for volume IV, SBPP, and therefore, the contract specialist did not send Guidehouse an email confirming the agency's receipt of volume IV as the contract specialist had done with the other volumes. COS/MOL at 13. Because NGA had not received a revised SBPP from Guidehouse, NGA did not revise Guidehouse's "fail" rating for the SBPP factor and in the final evaluation, NGA found Guidehouse ineligible for award. AR,

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<sup>3</sup> *See also* Tab G.4.e., Email from Guidehouse to NGA, June 20, 2023 (10:18 p.m.) (volume V, Security); AR, Tab G.4.f., Email from Guidehouse to NGA, June 20, 2023 (10:36 p.m.) (volume I, Cover Letter); AR, Tab G.4.g., Email from Guidehouse to NGA, June 20, 2023 (10:49 p.m.) (volume II, Technical Quotation); AR, Tab G.4.h., Email from Guidehouse to NGA, June 20, 2023 (10:50 p.m.) (passwords); AR, Tab G.4.i., Email from Guidehouse to NGA, June 20, 2023 (10:58 p.m.) (volume VI, Pricing).

<sup>4</sup> Guidehouse reports that it also sent an email with FQRs for volume IV, SBPP to the contract specialist at 10:52 p.m., which included attachments of the clean version and the track changes version of volume IV, SBPP as required by the solicitation. Protest at 7; Protest exh. 7, Email from Guidehouse to NGA, June 20, 2023 (10:52 p.m.). Guidehouse received an email from Microsoft Outlook stating that the email could not be delivered because the email attachments exceeded the size limit. Protest at 7; Protest exh. 8, Email from Microsoft Outlook to Guidehouse, June 20, 2023 (10:52 p.m.). Guidehouse then sent volume IV of its FQR in two parts--one email containing the volume IV track changes version sent at 11:03 p.m., noting that the clean version of volume IV would follow and one email containing the volume IV clean version sent at 11:06 p.m. Protest exh. 5, Email from Guidehouse to NGA, June 20, 2023 (11:03 p.m.); Protest exh. 6, Email from Guidehouse to NGA, June 20, 2023 (11:06 p.m.).

Tab E.2., Source Selection Decision (SSD) at 7. Following its evaluation of the four quotations, on September 30, NGA issued the task order to Kearney for \$71,110,211.88. COS/MOL at 20.

According to Guidehouse, it was unaware that NGA had not received the email with the FQRs for volume IV, SBPP until it received a brief explanation of the agency's selection decision, when NGA informed Guidehouse that it received a "fail" rating for the SBPP factor. Protest at 6. This protest followed on October 26.

After receiving the protest, NGA investigated whether the contracting officer and the contract specialist received emails transmitting volume IV of Guidehouse's FQR on June 20. COS/MOL at 22-23; *see also* AR, Tab G.2., Declaration of NGA Program Manager for [DELETED] (PM for [DELETED]) ¶¶ 2, 6. NGA explains that it employs a two-step cybersecurity check for recipients with an @nga.mil email address. AR, Tab G.2., Declaration of NGA PM for [DELETED] ¶ 4. The NGA email security gateway first scans the email and then the advanced malware-defense appliance scans the email for malicious content or code. *Id.* As a result, NGA's security controls will either drop, block, quarantine, or deliver email to the NGA server based on the scan results. *Id.* Only emails that pass both scans will be passed through to NGA's email server. *Id.* ¶ 5. [DELETED]. *Id.*

NGA's investigation revealed that two emails from Guidehouse were received by the NGA email security gateway, assigned a [DELETED] indicator, and passed to the advanced malware-defense appliance. COS/MOL at 22; AR, Tab G.2., Declaration of NGA PM for [DELETED] ¶ 7. NGA determined, however, that neither email was received into the NGA's email server and neither email was delivered to the recipients' email inboxes because of their [DELETED] status. COS/MOL at 23 ("The emails never reached the individual email inboxes of [the contract specialist and the contracting officer], and thus were not considered as received according to the unambiguous terms of the Solicitation."); AR, Tab G.2., Declaration of NGA PM for [DELETED] ¶¶ 3, 7-8. NGA was unable to learn the final disposition of the emails, *i.e.* whether they were dropped, blocked, or quarantined, because [DELETED]. *Id.* ¶ 7.

## DISCUSSION

Guidehouse asserts that volume IV, SBPP of its FQR was properly and timely submitted, and NGA erred in not evaluating and considering this volume of its revised quotation. In this regard, the protester represents that it sent two emails with the revised volume to the contract specialist at the email address identified in the RFQ on June 20 at approximately 11:00 p.m., the night before the deadline for receipt of revisions. Protest at 6-7. As noted above, Guidehouse supports this assertion with copies of emails it purportedly sent to the contract specialist and supporting records from Guidehouse's email server. Protest exh. 5, Email from Guidehouse to NGA, June 20, 2023 (11:03 p.m.); Protest exh. 6, Email from Guidehouse to NGA, June, 2023 (11:06 p.m.); Protest exh. 4, Declaration of Guidehouse IT Security Manager (refencing attached email server records for the outbound email from Guidehouse to the contract

specialist). In addition, Guidehouse argues that even if its emails were not delivered to the designated email inboxes, NGA should have considered volume IV of its FQR under the government control exception to the “late is late” rule established in FAR provision 52.212-1(f)(2)(i)(B). Protest at 7-8. Guidehouse also contends that NGA’s best-value determination was unreasonable. Protest at 9-11.

NGA responds that it did not receive FQRs for volume IV, SBPP from Guidehouse prior to the submission deadline. COS/MOL at 13, 20-24. As a result, NGA properly considered Guidehouse’s initial quotation volume IV, SBPP, which received a “fail” rating, and, therefore, NGA reasonably concluded Guidehouse was ineligible for award. *Id.* at 13, 21. As described above, NGA sent confirmation emails to Guidehouse for every FQRs volume received. *Id.* at 23 n.3. Notably, NGA did not confirm receipt of volume IV, SBPP and Guidehouse failed to follow-up with NGA about the missing confirmation for this volume. *Id.* at 23-24. Moreover, NGA’s investigation revealed that Guidehouse’s emails reached the NGA email security gateway but were never passed to NGA’s email server and were not delivered to the designated agency email inboxes. *Id.* at 22-24. NGA maintains that receipt of emails at its email security gateway is not delivery in accordance with the solicitation. *Id.*

As our Office has stated, it is a vendor’s responsibility to deliver its quotation to the proper place at the proper time, and the protester has the burden to show that it timely delivered its quotation to the agency at the specified address. *Advanced Decisions Vectors, Inc.*, B-412307, Jan. 11, 2016, 2016 CPD ¶ 18 at 5. Where, as here, an emailed quotation never makes it to the email addresses designated for receipt of quotations, the agency is not required to consider the quotation. *Id.* at 4; see also *Ace Elecs. Def. Sys., LLC*, B-420863, Sept. 2, 2022, 2022 CPD ¶ 233 at 3 (denying protest challenging rejection of protester’s proposal where the record confirmed the agency never received the emailed proposal prior to the closing time for receipt of proposals because the protester’s email was neither received in the agency email server nor in the inboxes of the designated email addresses).

Based on the record presented, we conclude that Guidehouse has not established that NGA received its emails with FQRs for volume IV, SBPP at the email addresses specified in the solicitation. The agency’s investigation revealed the emails were received by NGA’s security gateway and identified as a [DELETED]. The emails were then passed to NGA’s advanced malware-defense appliance to be scanned; the emails never made it to NGA’s email server and were never delivered to the designated agency inboxes. NGA concluded that even though there were no additional details on the disposition of Guidehouse’s emails, “the almost certain outcome based on these facts was that the advanced malware-defense appliance [DELETED] dropped the emails.” AR, Tab G.2., Declaration of NGA PM for [DELETED] ¶ 8. Contrary to Guidehouse’s position, delivery to NGA’s email security gateway does not constitute delivery to the email address designated in the solicitation, and, therefore, we find that the agency reasonably concluded that Guidehouse was ineligible for award because the FQRs were not received.

Next, we address Guidehouse's argument that NGA should have accepted its emailed volume IV FQRs because the emails were under government control prior to the time set for receipt of quotation revisions. In support of its position, Guidehouse notes that its federal supply schedule contract No. GS-00F-045DA, under which Guidehouse submitted its quotation, incorporated by reference FAR provision 52.212-1(f)(2), which provides that submissions not received by the designated agency office by the exact time specified would be "late" and would not be evaluated.<sup>5</sup> See AR, Tab B.3.b., Guidehouse Cover Letter FQR at 1 (identifying Guidehouse's GSA Schedule contract).

Before turning to the merits of the protester's arguments with respect to FAR provision 52.212-1, Instructions to Offerors--Commercial Products and Commercial Services, we note that the parties' arguments largely assume that the provision is relevant to the issues presented in this protest. However, it is not apparent that this is the case. In this regard, while the parties appear to assume that the provision is applicable ostensibly based on the inclusion of the provision in the relevant Schedule contracts, the solicitation at issue here does not appear to incorporate FAR provision 52.212-1. See, e.g., AR, Tab A.1.a., RFQ at 1, block 27a. Rather, the solicitation provides its own unique Section 4 – Instructions, Conditions, and Notices to Bidders. See AR, Tab A.4., RFQ amend. 3 at 9-16.

As discussed above, the RFQ's unique instructions required submission of FQRs to the contract specialist via email, and specifically provided that "[i]f one or more quote volumes are received after the time and date specified in the RFQ for quote submission, the [o]fferor's entire quote will be considered late and will not be evaluated or considered for award." *Id.* at 10. Unlike FAR provision 52.212-1(f), which includes potential exceptions to the "late is late" rule, the RFQ's unique provisions do not contemplate any such potential exceptions. As discussed herein, because the agency never received the protester's volume IV, SBPP FQRs, its quotation was therefore ineligible for award. Thus, where the FAR provision relied upon by the protester was not expressly incorporated into the solicitation, it is not apparent that any exception included therein is applicable to the facts here.

Even if, however, we were to consider the provision incorporated by reference, we nevertheless find no basis on which to sustain the protest. Rather than relying on FAR provision 52.212-1(f)(2)(i)(A), which requires electronic submissions to be received at the initial point of entry not later than 5:00 p.m. one working day prior to the date specified for receipt, Guidehouse contends that NGA should have accepted its FQRs under FAR provision 52.212-1(f)(2)(i)(B), which requires the government to accept late submissions if received before award; if acceptance "would not unduly delay the acquisition"; and if the quotation was received at the designated "[g]overnment

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<sup>5</sup> The provisions in parts 14 and 15 of the FAR governing the late delivery of bids and proposals or offers, generally do not apply to the late delivery of a quotation under FAR subpart 8.4. *Advanced Decisions Vectors, supra* at 7 n.10. However, where an RFQ contains the late submission provision, 52.212-1(f), the agency's consideration of late quotations is limited. *D B Sys., B-419542, Apr. 28, 2021, 2021 CPD ¶ 181* at 4.

installation” and “under the [g]overnment’s control prior to the time set for receipt[.]” FAR 52.212-1(f)(2)(i)(B); Protest at 7. In other words, Guidehouse argues that its FQRs should have been considered timely because NGA had control of its FQRs following its email submission. Protest at 7.

GAO has previously addressed this very issue in *Sea Box, Inc.*, B-291056, Oct. 31, 2002, 2002 CPD ¶ 181, and we concluded that FAR provision 52.212-1(f)(2)(i)(B) does not apply to quotations that are submitted electronically. Since that time, we have consistently continued to follow this interpretation of FAR provision 52.212-1(f). See e.g., *VERSA Integrated Sols., Inc.*, B-420530, Apr. 13, 2022, 2022 CPD ¶ 98 (declining to overturn our prior decisions finding that FAR provision 52.212-1(f)(2)(i)(B) does not apply to proposals submitted electronically); *Peers Health*, B-413557.3, Mar. 16, 2017, 2017 CPD ¶ 93 (same).

As we noted in *Sea Box*, FAR provision 52.212-1(f)(2)(i)(A) applies, by its express terms, when an offer has been submitted by an electronic commerce method and permits such a late submission to be considered for award only if it was received at the initial point of entry to the government infrastructure no later than 5:00 p.m. the preceding working day. Here, the FQRs in question were not submitted by 5:00 p.m. the day before revisions were due. If we were to view late electronically transmitted quotations as eligible to be considered for award under FAR provision 52.212-1(f)(2)(i)(B), regardless of whether they were received at the initial point of entry by the preceding working day, such a view would effectively render FAR provision 52.212-1(f)(2)(i)(A) a nullity. In that situation, a submission rejected under FAR provision 52.212-1(f)(2)(i)(A) could be considered under FAR provision 52.212-1(f)(2)(i)(B), a result we do not believe was intended. Moreover, as we noted in *Sea Box*, such an interpretation would be inconsistent with the fundamental principle that statutes and regulations must be read and interpreted as a whole, thereby giving effect to all provisions.

In sum, Guidehouse has failed to establish that its FQRs for volume IV, SBPP were actually received at NGA’s designated email inboxes prior to the submission deadline.<sup>6</sup> Guidehouse has also failed to demonstrate that NGA should consider its FQRs under

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<sup>6</sup> We note that the agency has never received the FQR for volume IV, SBPP from Guidehouse, other than at the security gateway. The existence of Guidehouse’s revisions were never known to the agency before award and have not been maintained in the agency’s possession. As a practical matter, there is no way for the agency to know what Guidehouse submitted prior to NGA’s award, and in essence, the FQRs for volume IV have been lost. The only means generally available to establish the content of allegedly lost information is for a vendor to reconstruct that information. To consider something other than what was originally sent would be inconsistent with the integrity of the procurement process. See *Shubhada, Inc.*, B-292437, Sept. 18, 2003, 2003 CPD ¶ 161 at 4 (denying protest where agency may have received and lost proposal, but there was not a systemic failure in the agency’s proposal-receipt process).

the government control exception to the “late is late” rule. We therefore find reasonable NGA’s decision to reject Guidehouse’s quotation.

Consequently, Guidehouse is not an interested party to challenge the agency’s evaluation and best-value determination. A protester is an interested party to challenge the evaluation of an awardee’s quotation only where there is a reasonable possibility that the protester’s quotation would be in line for award if the protest were to be sustained. See *D B Sys., supra* at 4 (finding that where the agency reasonably concluded that the protester’s quotation was late and ineligible for award, the protester was not an interested party to challenge the agency’s evaluation and award decision). Because NGA reasonably determined Guidehouse’s quotation to be ineligible for award, it is not an interested party.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel