



Decision

Matter of: DS Imports, LLC

File: B-423665

Date: August 20, 2025

Dharmesh Patel, for the protester.

Donna L. O'Berry, Esq., Department of Transportation, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed as factually and legally insufficient where the allegation does not facially demonstrate improper agency action.

DECISION

DS Imports, LLC, of Galveston, Texas, protests the issuance of a purchase order to Marine Structures, LLC, of Morehead City, North Carolina, under request for quotations (RFQ) No. 6923G525Q0567, issued by the Department of Transportation, Great Lakes St. Lawrence Seaway Development Corporation (GLS), for trapezoidal marine rubber fenders and mounting hardware. DS Imports argues that the agency unreasonably evaluated the firm's quotation.

We dismiss the protest.

BACKGROUND

On May 13, 2025, GLS issued the RFQ, using the policies set forth in Federal Acquisition Regulation part 12 in conjunction with the procedures under FAR subpart 13.5, to procure custom-fabricated trapezoidal rubber marine fenders and mounting hardware for installation along various canal lock wall locations along the St.

Lawrence River.¹ Agency Report, (AR) Tab B, RFQ at 1; COS/MOL at 2.² The rubber fenders are intended to replace existing timber or rubber fenders that have deteriorated beyond serviceable condition, and the replacement fenders will prevent damage to transiting vessels and protect the canals from damage. COS/MOL at 2.

The RFQ contemplated the issuance of a fixed-priced purchase order with the rubber marine fenders to be delivered within 90 days of award. RFQ at 1. The competition would be conducted using a lowest-price, technically acceptable source selection methodology, considering technical response, past performance, and price factors. *Id.* at 18-19.

The statement of work (SOW) provided that the selected vendor would deliver several items, including 100 16-inch fenders, 25 10-inch fenders, 250 angle mounts, and 250 clamp bars. RFQ at 34. It also included shop drawings of the fenders, which included side and end views. *Id.* at 36-37. The side view identified several holes where the fenders would be connected to the other hardware. *Id.* The SOW specified that the fenders shall be fabricated to the specifications in the provided drawings and all holes shall be shop drilled. *Id.* at 38.

Vendors were instructed to organize their quotations in three sections, section one, technical response; section two, past performance; and section three, price quote. RFQ at 17. As for technical responses, vendors were instructed to demonstrate ability to meet the requirements set forth in the SOW. *Id.* at 18. The RFQ instructed vendors to include a materials property table demonstrating all property, testing standard, requirements, and shop drawings of both “customized” fabricated rubber marine fenders and steel mounting hardware with a description of how the holes would be created. *Id.*

The RFQ advised that technical responses would be evaluated on an acceptable or unacceptable basis. RFQ at 19. The agency would evaluate whether the quoted product met the SOW requirements. *Id.* Further, the RFQ advised that the agency

¹ GLS is a wholly owned U.S. Government corporation that operates and maintains the American portion of the St. Lawrence Seaway between Lake Ontario and Montreal, Quebec, Canada, including operation of the Eisenhower and Snell locks in Massena, New York. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2; see also 33 U.S.C. §§ 981 *et seq.* Our regulations provide that we have authority to review procurements conducted by wholly owned government corporations, and we have previously exercised our bid protest jurisdiction over GLS. 4 C.F.R. § 21.0(c), 21.1(a); *Adams Industrial Services, Inc.*, B-280186, Aug 28, 1998, 98-2 CPD ¶ 56; *Video Ventures, Inc.*, B-240016, Oct. 19, 1990, 90-2 CPD ¶ 317; see also 33 U.S.C. § 981 note (the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, changed the name of the agency from “Saint Lawrence Seaway Development Corporation” to “Great Lakes St. Lawrence Seaway Development Corporation”).

² References to the RFQ use the Adobe PDF page numbers.

would consider whether vendors' shop drawings demonstrated compliance with the SOW and the technical exhibits (*i.e.*, the RFQ's drawings). *Id.*

As to past performance, the RFQ instructed vendors to reference at least two but no more than three similar contracts. RFQ at 18. When evaluating referenced contracts, the agency would first determine whether they were relevant and similar and then use Contractor Performance Assessment Reporting System (CPAR) reports and other information to assess the quality of performance for relevant and similar contracts. *Id.* Based on the quality of performance, the agency would determine, on a pass or fail basis, whether it had a reasonable expectation that each vendor would perform the contract successfully. *Id.*

Prior to the June 13, 2025, close of the solicitation period, twelve vendors, including DS Imports and Marine Structures, submitted quotations. COS/MOL at 2. The agency ranked quotations from lowest-to-highest price and determined that DS Imports was the second-lowest and that Marine Structures was the third-lowest. *Id.* at 4. After determining that the lowest-priced quotation was technically unacceptable, the agency proceeded to evaluate DS Imports' quotation. *Id.*

The agency evaluated DS Imports' quotation as technically unacceptable because its technical response was noncompliant with the SOW requirements. COS/MOL at 4. Specifically, agency evaluators noted:

The technical proposal from DS Imports is deemed technically unacceptable. The offeror provided a material property table and shop drawings as required, but the shop drawings for the rubber fenders fail to show any of the required holes or their location and tolerances. The shop drawings also include dimensional tolerances that are incorrect and too large in comparison to the provided drawings in the solicitation. Therefore, this proposal is unacceptable.

AR, Tab H, Tech. Evaluation Memorandum at 2. Because the agency determined that DS Imports' quotation was technically unacceptable, it did not evaluate the firm's referenced past performance. See AR, Tab I, Past Performance Memorandum at 2; RFQ at 19 ("An 'Unacceptable' rating on any section of the technical evaluation will make the overall technical rating 'Unacceptable' which causes the quote to be ineligible for award.").

The agency then proceeded to evaluate Marine Structures' quotation and determined that the firm's technical response and past performance was acceptable. AR, Tab H, Tech. Evaluation Memorandum at 2; Tab I, Past Performance Memorandum at 2. The agency issued the purchase order to Marine Structures at a price of \$860,175. COS/MOL at 4.

On June 23, the agency notified DS Imports that its quotation was unsuccessful. AR, Tab J, Unsuccessful Offeror Letter at 1. Shortly after receiving the letter, DS Imports

notified the agency that it wished “to protest this award.” AR, Tab K, Agency Correspondence with DS Imports at 3-4. The agency then provided DS Imports with a brief explanation, informing the firm that its proposal was deemed unacceptable due to the following:

[DS Imports’] shop drawings for the rubber fenders fail to show any of the required holes or their location and tolerances. The shop drawings also include dimensional tolerances that are incorrect and too large in comparison to the provided drawings in the solicitation.

Id. at 3. Later that day, DS Imports filed the instant protest with our Office.

DISCUSSION

The entirety of DS Imports’ protest is the following statement:

We had designed both of these fenders for [GLS] and successfully supplied these last year and attached performance letter is attached for our technical capabilities.

Electronic Protest Docketing System Dkt. No. 1, Comments. The firm then attached copies of the solicitation and a CPARS report. *Id.*

In its agency report filed in response to the protest, the agency requests dismissal of this allegation, arguing that it is legally and factually insufficient. COS/MOL at 6. The agency explains, while the allegation demonstrates that the firm has previously provided the fenders, that fact alone does not demonstrate that the agency unreasonably evaluated its technical response as unacceptable. *Id.* Alternatively, the agency argues that it reasonably evaluated DS Imports’ quotation as technically unacceptable because its technical response did not include compliant shop drawings. *Id.* at 7.

In its comments in response to the agency report, DS Imports argues that it has documented past performance, including delivering over 200 of the same fenders over the past five years. Comments at 2-3. The protester also raises multiple new allegations, including that its quotation included all of the requisite shop drawings, that the agency unreasonably evaluated its quotation because the solicitation did not explicitly require the holes to be included in the shop drawings, and that the agency unreasonably failed to conduct clarifications with the firm. *Id.* at 3-5.

After reviewing the pleadings, we agree with the agency and dismiss the protest. Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester’s claim of improper agency action. *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, 2025

CPD ¶ 169 at 4; *accord INNOVIM, LLC*, B-419912, B-419912.2, Sept. 21, 2021, 2021 CPD ¶ 331 at 5 (explaining an allegation that facially does not demonstrate improper agency action is factually and legally insufficient). Protesters must provide more than a bare allegation; the allegation must be supported by some explanation and evidence that establishes the likelihood the protester will prevail in its claim of improper agency action. See *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3-4.

Here, DS Imports' protest, at best, alleges that the agency unreasonably evaluated (or failed to select its quotation for award) because it previously provided the fenders under other contracts and had demonstrated "Very Good" quality of performance. See Dkt. No. 1, Comments; Dkt. No. 1, Contract Performance Letter at 2-3. While the CPAR report may show that the firm provided satisfactory fenders, the fact of the matter is the allegation does not demonstrate improper agency action because it does not show that the firm's technical response should have been evaluated as acceptable. Indeed, it simply does not show that the evaluation was inconsistent with the quotation's contents, or otherwise inconsistent with the terms of the solicitation.

This is significant because the RFQ advised that an "unacceptable" rating for the technical response factor would render a quotation ineligible for award. RFQ at 19. Thus, the allegation is legally insufficient because, even if the firm had a good record of past performance, the agency could not have selected the firm for award due to having an "unacceptable" technical response. Accordingly, we dismiss the protest.

Even if the allegation could be construed as a legally sufficient challenge to the agency's evaluation of the firm's technical response, we would not sustain the protest on this basis. In reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *TSC Enter., LLC*, B-415731, Feb. 8, 2018, 2018 CPD ¶ 71 at 2.

As stated above, the RFQ provided vendors with drawings of the fenders showing end and side views. The side views included numerous holes spaced at regular intervals. RFQ at 36-37. The SOW specified that the fenders shall be fabricated in accordance with the drawings and that the holes shall be shop drilled. *Id.* at 38. Further, the RFQ advised that the agency would evaluate quotations based on whether the shop drawings demonstrated compliance with the SOW requirements. *Id.* at 19.

Our review of DS Imports' quotation confirms the agency's position that the firm's shop drawings did not include holes as required by the SOW.³ Indeed, the firm's quotation

³ In its comments, the protester argues that its shop drawings were compliant with the SOW requirements but never articulates precisely how its shop drawings included the holes. See Comments at 3.

included shop drawings of its angle mount, clamp bar, 16V fender, and 10V fender. AR, Tab F, DS Imports Quotation at 18-21. While the drawings of the angle mount and clamp bar show the requisite holes, the drawings of the 16V and 10V fenders do not contain the holes. *Id.* The drawings of the 16V and 10V fenders include only end views, which just provide the fenders' dimensions. *Id.* at 20-21. Thus, we are not persuaded that the agency misevaluated the firm's quotation.

As to the allegations raised in DS Imports' comments (*i.e.*, that its quotation was evaluated unreasonably, that the RFQ contained a latent ambiguity, or that the agency failed to conduct clarifications), we dismiss these allegations as untimely. Our Bid Protest Regulations provide that any protest allegation not based on a solicitation impropriety must be filed not later than 10 days after the basis of the protest is known or should have been known.⁴ 4 C.F.R. § 21.2(a)(2); *University of Maryland*, B-416682, Oct. 24, 2018, 2018 CPD ¶ 366 at 6.

The filings show that the agency communicated to DS Imports the reasons for why its quotation was evaluated as "unacceptable" on June 23. Specifically, as stated above, the agency explained that the agency determined that the firm's shop drawings did not conform to the SOW requirements. AR, Tab K, Agency Correspondence with DS Imports at 3. The firm was therefore aware as of that date that the agency had evaluated its technical response as "unacceptable," interpreted the solicitation as requiring vendors to have provided shop drawings with holes, and elected not to conduct clarifications. As a result, any of these challenges must have been filed by July 3 to have been considered timely, and we dismiss them as untimely since they were not raised until July 29. *See University of Maryland, supra* (dismissing challenges as untimely when the protester raised them more than 10 days after it knew or should have known their bases).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

⁴ We also note that GLS had broad discretion when considering whether to conduct clarifications in this procurement using simplified acquisition procedures, and therefore its decision not to conduct clarifications is unobjectionable. *OReady, LLC*, B-422910.2, June 18, 2025, 2025 CPD ¶ 145 at 5 ("In sum, agencies have broad discretion as to whether to seek clarifications from vendors, and vendors have no automatic right to clarifications regarding its quotation."); *Smokeys Helping Hand, LLC*, B-422957 *et al.*, Dec. 3, 2024, 2024 CPD ¶ 295 at 7 (stating "agencies are not required to conduct clarifications with every vendor").