



United States Government Accountability Office  
Washington, DC 20548

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## Decision

**Matter of:** JV Derichebourg-BMAR & Associates, LLC

**File:** B-408777

**Date:** November 20, 2013

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Joseph P. Hornyak, Esq., Alexander B. Ginsberg, Esq., and T. Wayne Gray, Esq., Holland & Knight LLP, for the protester.

David L. Koman, Esq., Department of the Navy, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency properly rejected protester's proposal as late where the protester submitted its proposal via e-mail but failed to include its price proposal as an attachment, and the agency did not receive the protester's price proposal until after the designated closing time for receipt of proposals.

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### DECISION

JV Derichebourg-BMAR & Associates, LLC (JVDB), of Naples, Italy, protests the rejection of its proposal under request for proposals (RFP) No. N33191-13-R-0830, issued by the Department of the Navy, Naval Facilities Engineering Command for custodial and maintenance services at the Navy's support activity in Gricignano, Italy. The protester contends that the agency improperly rejected its proposal as late.

We deny the protest.

The RFP instructed prospective offerors that proposals should be submitted to the contract specialist, with a copy to the contracting officer, by 3 p.m., Central European Time, on July 8, 2013. RFP at 92. JVDB sent two e-mail messages to the designated individuals prior to the specified closing time. The first message advised the recipients that JVDB would be submitting its proposal in two separate e-mail messages, with the first e-mail consisting of the protester's technical proposal and the second e-mail consisting of the protester's price proposal, joint venture documents, and its line item schedule. As indicated, a copy of the protester's technical proposal was attached to the first message. The second

e-mail message reiterated the representation that the protester's price proposal, joint venture documents, and line item schedule were attached; however, as discussed below, the message, as received by the designated individuals, included no attachments.

On July 9, the contract specialist, who had been out of the Office on July 8, returned to work and began to open the e-mailed proposals. She opened the e-mail message identified by the protester as e-mail 1 of 2, printed the attachment, and sent the protester an e-mail response acknowledging that the message had been received. The contract specialist also opened the protester's second e-mail message, but found no attachments. The contract specialist did not acknowledge this e-mail message.

The contract specialist proceeded to contact the contracting officer to see whether he had received the attachment to the second e-mail. The contracting officer, who had also been out of the office on July 8 and who had not opened either of JVDB's e-mail transmissions prior to being contacted by the contract specialist, opened both of the protester's e-mails and verified that while the first e-mail included an attachment, the second e-mail did not.

The contract specialist then contacted the office's computer service provider to determine whether there had been any issues with the system on July 8 that might have prevented the delivery of e-mail attachments. On July 10, the computer services provider responded that there had been no issues on the date in question.

Also on July 10, the contract specialist and the contracting officer received a third e-mail message from JVDB, which indicated that the protester had received acknowledgment of its first e-mail only, and thus was resending the second message. This third e-mail message included the protester's price proposal, joint venture documents, and line item schedule as attachments. Because this message was received after the specified closing time, the contracting officer considered it to be untimely.

On July 11, the contracting officer notified JVDB that its proposal had been rejected as incomplete. On July 15, the protester filed an agency-level protest, in which it speculated that the Navy's e-mail system had stripped the attachments from its message. The protester argued that if this were the case, the agency should consider the proposal. In the alternative, JVDB argued that when the contracting office received its second e-mail without the referenced attachments, the agency was on notice of a problem with the transmission and should have followed up with the protester. In JVDB's view, since the agency failed to alert JVDB of the problem, the agency should consider its price proposal.

In response to the agency-level protest, the contract specialist again contacted the office's computer services provider, which examined its logs. The logs showed that two e-mail messages had been received from the protester on July 8, the first of which included an attachment and the second of which did not. The logs identified the status of each message as "Legitimate," meaning that they were delivered without alteration. In this connection, the Deputy Director of the Theater Network Operation Support Europe explained that if an attachment is stripped from an e-mail message, the word "Blocked" appears in the log instead of the word "Legitimate," and a reply is triggered and sent to the sender informing him/her that the attachment has been removed. Declaration of the Deputy Director, Aug. 5, 2013; Exh. C to Agency-level protest decision. The Deputy Director further reported that no computer network or system errors affecting the receipt and delivery of e-mail were recorded on July 8 between 8 a.m. and 4 p.m.

By decision of August 14, the Navy denied JVDB's agency-level protest, noting that there was no evidence that the Navy's e-mail servers had stripped the attachments from the second e-mail. The agency further noted that its personnel had not been required to open the protester's e-mails until after the submittal deadline had passed.

JVDB protested to our Office on August 26. The protester does not dispute the agency's findings regarding the absence of computer or system errors, which could have affected the agency's receipt of JVDB's price proposal. Rather, JVDB simply argues that it was unreasonable for agency personnel not to have reviewed its e-mails--and notified it of the missing attachments--on July 8.

The protester's argument is without merit. As an initial matter, the protester bore the burden of ensuring the timely receipt of its proposal, not the agency, and where JVDB's proposal was received late, it could not be considered except under limited circumstances specifically set forth in the Federal Acquisition Regulation (FAR), none of which apply in this case. See FAR § 52.215-1(c)(3). To the extent the protester suggests that the lateness of its proposal should be excused because the agency's procedures for receipt of proposals were deficient, we disagree. JVDB has cited no law, regulation, or decision by this office--nor are we aware of any--in support of the proposition that agency personnel have a duty to review e-mailed offers for completeness prior to the proposal closing date and to notify offerors of any missing sections. Ultimately, the primary cause of JVDB's late proposal submission was the protester's failure to attach its price proposal when it e-mailed its proposal to the agency, not the agency's failure to alert the protester to this error

on the date proposals were due.<sup>1</sup> See Turner Consulting Group, Inc., B-400421, Oct. 29, 2008, 2008 CPD ¶ 198 at 4.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>1</sup> Even if agency personnel had opened JVDB's e-mail message on July 8, shortly after proposals were due, and alerted the protester to its error, the result would be the same--JVDB's proposal would still have been late and therefore unacceptable.