

## Decision

**Matter of:** D B Systems

**File:** B-419542

**Date:** April 28, 2021

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Dewey Blake Jr., for the protester.

Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.

Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where request for quotations included the late submission provision set forth in Federal Acquisition Regulation provision 52.212-1(f)(2)(i) and protester's quotation was received after the submission deadline, protester is ineligible for award and is therefore not an interested party to challenge the awardee's evaluation.

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### DECISION

D B Systems (DBS),<sup>1</sup> a service-disabled veteran-owned small business (SDVOSB) of Washington, New Jersey, protests the issuance of an order to Elevated Technologies, Inc. (ETI), of Grand Rapids, Michigan, under request for quotations (RFQ) No. 36C24620Q0241, issued by the Department of Veterans Affairs (VA) for elevator maintenance and repair services at the Durham VA Medical Center (VAMC). DBS contends that the agency's evaluation of ETI's quotation and the award decision are unreasonable.

We dismiss the protest.

### BACKGROUND

On July 2, 2020, the agency issued the RFQ as an SDVOSB set-aside, to procure elevator maintenance and repair services for the VAMC pursuant to the Federal Acquisition Regulation (FAR) part 12, commercial items, and subpart 13.5, simplified

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<sup>1</sup> DBS is also identified in the protest record as DB Systems Tech, Inc. and D&B Systems.

acquisition procedures.<sup>2</sup> MOL at 1 -2; Agency Report (AR), Tab 1, RFQ at 1, 52.<sup>3</sup> The RFQ contemplated issuance of a single, fixed-price order, with a 1-year base period and four 1-year option periods, to the vendor that submitted the most advantageous quotation, considering the following three evaluation factors: technical, past performance, and price. RFQ at 55-59. The RFQ stated that the non-price factors, when combined, were significantly more important than the price factor. *Id.* at 55. The solicitation also reserved to the agency the right to issue an order “to other than the lowest[-]priced” vendor. *Id.*

Of relevance here, the solicitation incorporated by reference FAR provision 52.212-1, Instructions to Offerors--Commercial Items, which expressly limits the agency’s consideration of late submissions.<sup>4</sup> RFQ at 1. Specifically, subsection 52.212-1(f)(2)(i) states that any offer received after the exact time specified for receipt of offers is “late” and will not be considered unless (1) it is received before award is made; (2) the contracting officer determines that accepting the late offer would not unduly delay the acquisition; and (3) one of three exceptions applies.<sup>5</sup>

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<sup>2</sup> The agency amended the RFQ twice; neither amendment is relevant to this protest. Memorandum of Law (MOL) at 4.

<sup>3</sup> The agency produced the agency report exhibits, referred to as “Tabs,” in one Adobe (.pdf) file. All page references are to the pages of that document.

<sup>4</sup> Although FAR provision 52.212-1 at times refers to “offers,” it is clear from the agency’s incorporation of this provision in the solicitation that it was intended to apply to the quotations received here. *Robertson & Penn, Inc., dba Cusseta Laundry*, B-417323, May 16, 2019, 2019 CPD ¶ 194 at 4 (finding that the agency’s incorporation of FAR provision 52.212-1(f)(2)(i) in the RFQ made clear that the agency intended the provision to apply to the quotations it received, notwithstanding the provision’s reference to “offers” instead of quotations).

<sup>5</sup> The three exceptions are:

(A) [i]f [the quotation] was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) [t]here is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) [i]f this solicitation is a request for proposals, it was the only proposal received.

FAR 52.212-1(f)(2)(i)(A)-(C). These exceptions do not apply in this protest.

Quotations were due by 4:30 p.m. Eastern Time on July 17, 2020. RFQ at 52. The contract specialist, who was identified as the primary point of contact in the RFQ, received three complete quotations by the deadline. AR, Tab 2, Contracting Officer's Statement (COS) at 89. DBS submitted its quotation in five separate emails only the first of which was received by the contract specialist by the 4:30 p.m. deadline. *Id.*; AR, Tabs 3-7, DBS Quotation Emails 1 through 5 to the VA at 91-308. DBS's partial email quotation received by the deadline did not include pricing for the four 1-year option periods, required licenses and certifications, and key contractor personnel résumés. See AR, Tab 3, DBS Quotation Email 1 to the VA at 91-205.

DBS also called the contract specialist on July 17 to notify her that DBS was experiencing technical difficulties when submitting its quotation. COS at 89. DBS did not request an extension and no extension was provided. *Id.* Although the agency did not receive DBS's complete quotation until after the deadline for quotations, the agency nonetheless evaluated the quotation, finding it ineligible for award because DBS's quotation did not include all the required information and did not address portions of the technical factor.<sup>6</sup> MOL at 11-12. On January 8, 2021, the agency issued the order to ETI for \$2,138,876. AR, Tab 11, Award Notification at 386. This protest followed.

## DISCUSSION

DBS challenges the agency's evaluation of ETI's quotation and argues that ETI cannot meet the solicitation requirements.<sup>7</sup> Protest at 2-3. In response, the agency argues that DBS's quotation was late and therefore, ineligible for award, regardless of whether the contracting officer mistakenly evaluated the quotation.<sup>8</sup> MOL at 8-10. As such, the agency argues that DBS is not an interested party to challenge ETI's evaluation or the agency's award decision. *Id.* at 9-10. In support of its position, the agency cites FAR provision 52.212-1(f)(2)(i), which was included in the solicitation by reference and established that quotations must be received by the submission date and time in order to be considered. *Id.* at 8-9. The agency contends that it was "of no import" that the

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<sup>6</sup> The contracting officer explains that she mistakenly believed that DBS's quotation had to be considered even if late. COS at 89.

<sup>7</sup> While we do not discuss all of the protester's arguments, we have considered them all and find none provide a basis to sustain the protest. For example, the protester argued that the agency failed to issue the order to the lowest-priced, technically acceptable vendor. Protest at 2. We dismissed this protest ground as legally insufficient because the RFQ did not provide for award on a lowest-price, technically acceptable basis. GAO Decision on Dismissal Req. at 1.

<sup>8</sup> No protective order was issued in this matter because DBS proceeded with its protest without counsel. A full version of the agency report was provided to our Office, while a redacted version was furnished to the protester. We have reviewed the entire record. As much of the information reviewed by our Office is source selection sensitive or proprietary in nature, our discussion of some aspects of the procurement is necessarily general in nature.

contracting officer incorrectly believed that the late quotation had to be evaluated and the agency evaluated the quotation. *Id.* at 9 n.13. We agree.

It is a vendor's responsibility, when transmitting its quotation electronically, to ensure the delivery of its quotation to the proper place at the proper time. *Team Housing Sols.*, B-414105, Feb. 10, 2017, 2017 CPD ¶ 55 at 4. Moreover, we have previously found that quotations received after the submission deadline are late and cannot be considered--with certain exceptions not applicable here--when a solicitation contains the late submission provisions set forth in FAR 52.212-1(f)(2)(i). *Robertson & Penn, Inc., dba Cusseta Laundry, supra* at 3 n.3 (finding no merit to the argument that the agency waived the submission deadline by not rejecting the late quotation when the solicitation contained FAR provision 52.212-1); *see also Data Integrators, Inc.*, B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 2 (sustaining protest where agency awarded to late quotation despite solicitation provision that any quotation "received . . . after the exact time specified for receipt will not be considered"). This rule, while it may seem harsh, alleviates confusion, ensures equal treatment of all vendors, and prevents one vendor from obtaining a competitive advantage that may accrue where a vendor is permitted to submit a quotation later than the deadline set for all competitors. *See Spanish Sols. Language Servs., LLC*, B-418191, Jan. 2, 2020, 2020 CPD ¶ 20 at 4.

Here, the RFQ incorporated FAR provision 52.212-1, which expressly limits the agency's ability to consider late quotations to circumstances not present here. As this provision is incorporated into the solicitation and the agency received DBS's complete quotation after the deadline, the agency is unable to consider the quotation. This is true notwithstanding the contracting officer's mistaken belief that late quotations received before the beginning of the source selection process must be evaluated.

Consequently, DBS is not an interested party to challenge the agency's evaluation of ETI and the award decision. 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 Verisys Corp.*, B-413204.5 *et al.*, Oct. 2, 2017, 2017 CPD ¶ 338 at 13 (finding that where the agency reasonably concluded that the protester's quotation was technically unacceptable, the protester was not an interested party to raise additional challenges). Because DBS's quotation was late, and therefore ineligible for consideration, it is not an interested party.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel