



Decision

Matter of: Sofia Health, LLC

File: B-422186

Date: January 30, 2024

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DIGEST

Protest challenging the agency's evaluation is dismissed where the record shows that the protester is not an interested party because its quotation was not received at the email address designated by the solicitation for receipt of quotations.

DECISION

Sofia Health, LLC, a service-disabled veteran-owned small business (SDVOSB) of Playa Del Ray, California, protests the award of a contract to The HABITS Group, LLC, an SDVOSB of Austin, Texas, under request for quotations (RFQ)

No. 36C24923Q0645, issued by the Department of Veterans Affairs (VA) for health and wellness classes and services. The protester argues that the agency should have awarded Sofia Health the contract, contending that its quotation presented the best value to the agency and alleging that the agency improperly based the award on a lowest-priced, technically acceptable (LPTA) source selection scheme that was inconsistent with the solicitation.

We dismiss the protest on the basis that the protester is not an interested party.

BACKGROUND

On September 21, 2023, the VA issued the RFQ as an SDVOSB set-aside for the provision of complimentary and integrative health wellness classes and services under the procedures of Federal Acquisition Regulation (FAR) parts 12, commercial products and services, and 13, simplified acquisition procedures. Req. for Dismissal, Exh. 1,

RFQ at 2, 5. The RFQ provided for the issuance of a firm-fixed-price contract to the vendor whose quotation “will be most advantageous to the [g]overnment considering [three] factors”: technical, price, and past performance. *Id.* at 5. As relevant here, the solicitation provided that quotations were to be submitted by September 27,¹ advised that “[e]mailed quot[at]ions are the only method of submitted quot[at]ions,” and cautioned vendors that they “bear the burden of ensuring that all portions of the offer . . . reach the designated office before the deadline specified in the solicitation.” *Id.* at 2. The RFQ also incorporated FAR provision 52.212-1² regarding the circumstances under which an agency may accept a late submission in a procurement conducted under FAR part 12.³

Sofia Health states that it timely submitted its quotation via email to the contracting officer by the September 27 due date. Protest at 5. On September 29, the agency made award to The HABITS Group and posted the notice of award on SAM.gov. Req. for Dismissal at 3. On October 2 and again on October 6, the protester emailed the contracting officer to request a debriefing. *Id.* On October 10, the protester and the contracting officer had a telephone conversation in which the protester was informed that the contracting officer had not received Sofia Health’s quotation. Req. for Dismissal, Exh. 3, Contracting Officer Statement of Facts at 1. Later that same day the protester submitted another email, requesting that the agency recognize the protester’s quotation as timely and evaluate it, on the basis that although it apparently did not reach the contracting officer’s email box, it had been submitted prior to the deadline and was within the government’s control. Req. For Dismissal, Exh. 5, October 10 Emails at 3. The contracting officer informed the protester by email that he had not received Sofia Health’s quotation by the closing time, and that he could not consider the quotation for award because it was late, citing FAR provision 52.212-1(f). Protest at 5; Req. for Dismissal, Exh. 3, Contracting Officer Statement of Facts at 1-2; Req. for Dismissal, Exh. 5, October 10 Emails.

¹ The solicitation was amended once, to extend the due date for quotations to September 27. See Req. for Dismissal, Exh. 2, RFQ amend. 1 at 2.

² As relevant here, FAR provision 52.212-1(f)(2)(i) states that a late offer will not be considered “unless it is received before award is made” and the agency finds that “accepting the late offer would not unduly delay the acquisition,” and one of the following three conditions applies: the offer was submitted electronically and “received at the initial point of entry to the [g]overnment infrastructure not later than 5:00 p.m. one working day prior to the [submission due date]”; the submission was “under the [g]overnment’s control prior to the time set for receipt of offers”; or the solicitation is a request for proposals, and the agency only received one proposal. FAR provision 52.212-1(f)(2)(i)(A)-(C).

³ We note that although the FAR provision at times refers to “offers” rather than quotations, where an agency incorporates this provision in an RFQ issued under FAR part 12, as here, we have found it clear that it was intended to apply to the quotations the agency received. *D B Systems*, B-419542, Apr. 28, 2021, 2021 CPD ¶ 181 at 2 n.4.

On October 23, the protester filed a pre-filing notice with the U.S. Court of Federal Claims, notifying the VA and the court that it intended to file a bid protest with the court by October 27, in which the protester would argue that Sofia Health timely submitted its quotation and the VA improperly failed to evaluate it. Protest at 5. The contracting officer subsequently contacted the VA's Office of Information and Technology to determine whether the agency had received the protester's quotation. Req. for Dismissal, Exh. 3, Contracting Officer Statement of Facts at 2. That office "found evidence showing that both of Sofia Health's emails sent on September 27 [] hit the government inbound email server [], and then the emails were quarantined," preventing them from being delivered to the contracting officer's inbox. *Id.*

The agency states that, based on the advice of the Department of Justice and on Sofia Health's stated intention to file a protest with the court, the VA decided to search for and subsequently retrieve Sofia's quarantined email with its quotation from the government's inbound email server and evaluate the protester's quotation. Req. for Dismissal at 4-5. On October 30, the agency notified Sofia Health that its quotation was technically acceptable, but that HABITS had submitted the most advantageous quotation, was considered to offer the best value, and therefore would remain the awardee. *Id.* at 5; Protest at 5. This protest followed.

DISCUSSION

The protester challenges the award to HABITS, claiming that its own quotation is the most advantageous to the government and arguing that the agency improperly used an LPTA evaluation scheme rather than a best-value source selection scheme. Protest at 6. The VA, however, requests dismissal of Sofia Health's protest on the basis that the protester is not an interested party. Req. for Dismissal at 6. The agency asserts that the protester's quotation was late, rendering the quotation ineligible for award. As a consequence, Sofia Health would not be affected by the award to another vendor. *Id.* In support of its argument that the quotation was late, and ineligible for award, the agency points to the incorporated FAR provision, 52.212-1(f)(2)(i), which "expressly provides that submissions must be received by the stated deadline in order to be considered, except under specified exceptions not present here." *Id.* at 7. The VA makes this dismissal request after having coordinated with the Department of Justice on the question of whether the agency should consider Sofia Health's late quotation and having then evaluated the quotation. After having decided to evaluate its quotation, the protester maintains that the agency cannot now seek dismissal on the basis that the quotation was late and therefore ineligible for award. Resp. to Req. for Dismissal at 1.

We turn first to whether the protester's quotation, submitted by email, was late.

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. *D B Systems, supra* at 4; see FAR provision 52.212-1(f)(1); see, e.g., *Ace Elecs. Def. Sys., LLC*, B-420863, Sept. 2, 2022, 2022 CPD ¶ 233 at 3-4 (finding that where an emailed proposal never

reaches the email address designated for receipt of proposals, the agency is not required to consider the proposal).

With respect to the question of the quotation's lateness, we agree with the agency that Sofia Health's quotation could not be accepted because it was late. It is undisputed that on September 27, Sofia Health made two attempts to submit its quotation via email to the agency; and that both of these emails were quarantined and failed to reach the contracting officer's inbox. Req. for Dismissal, Exh. 3, Contracting Officer Statement of Facts at 2; Protest at 5.

FAR provision 52.212-1(f)(2)(i) states that a late offer will not be considered unless it is received before award is made, the agency finds that accepting the late offer would not unduly delay the acquisition, and one of the following three conditions applies: the offer was submitted electronically and received at the initial point of entry to the government infrastructure not later than 5:00 p.m. one working day prior to the submission due date; the submission was under the government's control prior to the time set for receipt of offers; or the solicitation is a request for proposals, and the agency only received one proposal. FAR provision 52.212-1(f)(2)(i)(A)-(C). Applying the plain language of this provision, our Office has concluded that only the first of these conditions applies to electronically submitted offers. See *Sea Box, Inc.*, B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3.

In short, because Sofia Health's quotation was not sent until September 27, and thus not received at the designated initial point of entry by 5:00 p.m. on September 26, its submission does not satisfy the requirements of FAR provision 52.212-1(f)(2)(i)(A). Due to being quarantined, Sofia Health's quotation did not timely arrive at the email address designated for receipt of quotations and thus did not satisfy the requirements of FAR provision 52.212-1(f)(2)(i)(A), and thus was late.

In addition, the agency's decision to evaluate Sofia Health's quotation in an apparent attempt to stave off imminent litigation, does not change our analysis. As we have explained, even where an agency may have evaluated a quotation, when the quotation was received after the submission deadline, it is late and cannot be considered when a solicitation contains the late submission provisions set forth in FAR 52.212-1(f)(2)(i). *D B Systems, supra* at 4 (finding that regardless of whether the contracting officer mistakenly evaluated the protester's quotation, the quotation was late and consequently ineligible for award); *Robertson & Penn, Inc., dba Cusseta Laundry*, B-417323, May 16, 2019, 2019 CPD ¶ 194 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). We reasoned that this rule 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. *D B Systems, supra* at 4. The VA's decision here to evaluate Sofia Health's quotation does not alter the lateness of the quotation. To do so would undermine the principle of treating vendors fairly and equally.

In sum, Sofia Health is not an interested party to challenge the VA's evaluation of quotations and subsequent award decision. A protester is not an interested party to challenge the evaluation of an awardee's quotation where it would not be in line for contract award were its protest to be sustained. See *Verisys Corp.*, B-413204.5 *et al.*, Oct. 2, 2017, 2017 CPD ¶ 338 at 13. Given that Sofia Health's quotation was late, the quotation is ineligible for consideration; thus, Sofia Health is not an interested party.

The protest is dismissed.

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General Counsel