



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: PMTech, Inc.

File: B-291082

Date: October 11, 2002

Eric J. Marcotte, Esq., and Scott Schipma, Esq., Winston & Strawn, for the protester.
Gena E. Cadieux, Esq., and Paul A. Gervas, Esq., Department of Energy, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's rejection of the protester's proposal as late under a negotiated procurement that required the electronic submission of proposals is denied, where the protester waited until 13 minutes before the time set for receipt of proposals to transmit its proposal electronically to the agency's web-site and only the cover sheet of the electronic proposal was received by the agency by the time specified.

DECISION

PMTech, Inc. protests the rejection of its proposal, as late, under request for proposals (RFP) No. DE-RP01-02SO20138, issued by the Department of Energy (DOE) for technical support services for the agency's Office of Classified and Controlled Information Review.

We deny the protest.

DOE's Office of Classified and Controlled Information Review is responsible for the review of documents for identification of classified information and for determining whether classified documents can be sanitized or declassified for public release. Contracting Officer's Statement/Memorandum of Law at 1. The RFP, issued electronically on June 10, 2002 on the agency's Industry Interactive Procurement System (IIPS) web-site ([see <http://doe-iips.hq.doe.gov>](http://doe-iips.hq.doe.gov)), sought proposals for technical services supporting this office. Offerors were informed that the acquisition was completely set aside for small business and that DOE intended to award,

without conducting discussions, a single contract for a 24-month base period with 3 option years.

The RFP provided detailed instructions for the preparation and submission of proposals. Among other things, the RFP provided that, with the exception of the response to one subfactor concerning the offerors' specialized knowledge in declassification activities, offers must be submitted electronically through the agency's IIPS web site. RFP amend. 04 (July 22, 2002). Specific instructions for preparation of electronic submissions were provided. For example, the RFP provided that proposals were to be formatted in one of a number of identified applications (that is, Adobe Acrobat PDF, Word, WordPerfect, Excel, or Lotus 1-2-3), and that the offer should consist of electronic files to be submitted as three volumes: volume I (Offeror & Other Documents), volume II (Technical), and volume III (Cost/Price). RFP § L.20.

As amended, the RFP required proposals to be filed by noon, Eastern Standard Time, on July 25, 2002. RFP amend. 02 (June 28, 2002). The RFP also included the standard "Instructions to Offerors--Competitive Acquisition" clause of Federal Acquisition Regulation (FAR) § 52.215-1, which states in relevant part that an offeror is responsible for ensuring that its proposal is submitted so as to be received in the designated government office by the time specified in the solicitation, and that a proposal that was received after the exact time specified was "late" and would not be considered.

DOE received a number of offers in response to the RFP, including PMT's. The IIPS log shows that PMT began a series of interactions with IIPS beginning at 11:46:38 a.m. on July 25. See Agency Report, Tab 2, Declaration of DOE's IIPS Project Manager (Sept. 5, 2002), attach. A. The log shows that beginning at 11:47:27 am PMT attempted to submit something to IIPS but an error occurred with the following message "SSL Handshake failed."¹ According to the log, at 11:49:29, PMT was able to post something to IIPS. However, DOE found that as of noon on July 25 PMT had submitted only the cover sheet for its proposal. Contracting Officer's Statement/Memorandum of Law at 4. After noon on July 25 and on July 26, PMT submitted additional electronic files that comprised its proposal. At least one proposal was timely received by DOE. Supplemental Contracting Officer's

¹ According to DOE's IIPS User Guide for Contractors (Mar. 2002), SSL is an acronym [that] stands for Secure Socket Layer. SSL is a security protocol that protects data by encrypting it as it passes between servers and Web client. The system administrator distributes the certificate to Web users.

Agency Report, Tab 3, DOE IIPS User Guide for Contractors (Mar. 2002) at 6.

Statement (Sept. 24, 2002) at 1. Because the agency had not received PMT's complete proposal by the receipt deadline of noon on July 25, DOE rejected PMT's proposal as being late. This protest followed.

PMT complains that the RFP required submission of most of an offeror's proposal through IIPS and that PMT "took all reasonable steps to submit its proposal in a timely manner," in accordance with the solicitation instructions. PMT states that it entered the IIPS at 11:49 a.m. and "uploaded material" and that the failure of IIPS to record PMT's proposal must be as a result of DOE's "computer malfunction." Protest at 5. In this regard, PMT submitted a statement of an "information technology scientist," who states that, based upon his review of the IIPS log provided in the agency report,

it appears that [PMT's] attempts to enter its proposal into IIPS [were] disrupted by errors occurring with the server side IIPS application as well as errors that appear to be attributable to the IIPS client application during operations where data is being transferred to the IIPS server. In all cases, however, errors are internal to the IIPS application and cannot reasonably be attributed to [PMT].

Declaration of Information Technology Scientist, attached to Protester's Comments (Sept. 16, 2002), at 2. PMT argues, based upon this declaration, that this "likely explain[s] why [PMT's] proposal was not saved on the server." Protester's Comments at 5.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR § 15.208(a); Integrated Support Sys. Inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. Proposals that are received in the designated government office after the exact time specified are "late," and generally may be considered only if received before award and the circumstances satisfy the specific requirements set forth in FAR § 15.208(b)(1).² While the rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors. Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3.

We view it as an offeror's responsibility, when transmitting its proposal electronically, to ensure the proposal's timely delivery by transmitting the proposal sufficiently in advance of the time set for receipt of proposals to allow for timely

² This rule regarding late proposals also applies to proposals which are received in part prior to the deadline, but where material portions of the proposal are not received until after the deadline. See Cyber Digital, Inc., B-270107, Jan. 24, 1996, 96-1 CPD ¶ 20 at 4.

receipt by the agency. In this regard, FAR § 15.208(b)(1)(i) provides that a late proposal, received before award, may be accepted:

If it 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 proposals.

The crux of PMT's arguments is that the late receipt of its proposal was the result of some "unidentified error" in the IIPS, so that the agency should not be allowed to reject the proposal as late.³ If there was a problem with the IIPS, however, it was apparently not systemic: the record does not demonstrate, nor does PMT allege, that DOE did not have an appropriate system in place to receive and safeguard proposals submitted in response to the RFP. Indeed, DOE's IIPS project manager states that, as shown in the IIPS log, the system was operational throughout July 25, the closing date for receipt of proposals under the RFP, and that the agency received a number of proposals both for this RFP and other solicitations before and after the time set for receipt of proposals. Agency Report, Tab 2, Declaration of IIPS Project Manager (Sept. 5, 2002), at 1-2.

In our view, the record shows that the primary cause of PMT's late delivery of its electronic proposal was that PMT delayed attempting to transmit its proposal until only 13 minutes before the time set for the receipt of proposals. An offeror's responsibility to deliver its proposal to the proper place at the proper time includes allowing a reasonable amount of time for the delivery of the proposal. Thus, we have found that where an offeror delayed transmitting a lengthy facsimile best and final offer until 10 minutes prior to the closing deadline, and the agency otherwise had reasonable facsimile submission procedures in place, the late receipt of the offeror's facsimile transmission was the fault of the offeror and not the government. See Brookfield Dev., Inc. et al., B-255944, Apr. 21, 1994, 94-1 CPD ¶ 273 at 3; see also Cyber Digital, Inc., supra, at 4 (late receipt of facsimile transmission of best and final offer was offeror's fault where offeror waited until 30 minutes before the closing

³ PMT cites decisions from our Office to support its argument that "government mishandling" was the paramount cause of the late receipt of a proposal, so that the bid should not be rejected as late. Protester's Comments at 7. To succeed in a challenge that government mishandling caused a proposal to be late, however, a protester must first establish through acceptable evidence that the proposal was received at the government installation designated for receipt of proposals and "was under the Government's control" prior to time set for receipt of proposals. See FAR § 15.208(b)(1)(ii); see also The Staubach Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 4. Here, PMT does not show, or even allege, that its proposal had been received and was under the agency's control prior to the time set for receipt of proposals. Accordingly, we view the "government mishandling" issue as irrelevant.

time to request an extension, which was denied, and thereafter transmitted the proposal).

Here, we find that PMT did not act reasonably in waiting to transmit its electronic proposal until 13 minutes before the time set for receipt of proposals. It is true that neither party has been able to demonstrate exactly why PMT's submission was not saved in IIPS prior to the closing time, and it is possible that some error occurred in the system. Nevertheless, as the protester itself recognizes, "Occasional errors in computer systems are a fact of life." Protester's Comments at 1. We think an offeror accepts the risk of late receipt and rejection of a proposal where it delays transmitting its proposal until the last few minutes before the time set for receipt of proposals.⁴

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ PMT also complains that DOE amended the solicitation only 3 days before the closing date to provide that one part of the proposal could not be electronically transmitted. PMT argues that this allowed it insufficient time to prepare its electronic proposal for an earlier transmission to the agency. However, PMT did not request an extension of the closing date or timely protest that it had insufficient time to prepare its proposal.