

When Submitting a Proposal, Late Is Late. Now, Even Early May Be Late If the Proposal Gets "Spammed."

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Government Contracts Issue Update

Offerors must overcome numerous hurdles in preparing and submitting proposals on a timely basis. A recent decision by the U.S. Government Accountability Office (GAO) has added yet another, and unexpected, obstacle – offerors now must be aware of and plan for the kidnapping of an otherwise timely proposal by an agency's spam filter.

It is a well-established principle that offers submitted after the submission deadline will not be considered for award, unless the circumstances specified in the FAR permitting acceptance of a late offer are met. The FAR is clear that the obligation is on the offeror to submit the proposal on time: "Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation." FAR 52.212-1. Applying this principle in a recent decision, *Advanced Decisions Vectors, Inc.*, B-412307, Jan. 11, 2016, the GAO ruled that a contractor failed to timely submit its quote when the contractor's email containing the quote was blocked by the agency's spam filter from reaching the individual designated to receive quotes by the time specified in the solicitation. The decision serves as a warning to contractors that even an early submission of an offer may be ensnared by the tentacles of a spam filter and deemed late if it does not reach the intended recipient by the deadline as a result.

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The *Advanced Decisions Vectors* decision stems from a U.S. Department of Homeland Security (DHS) procurement for analytical, statistical, consulting, and program management services that was issued through the U.S. General Services Administration’s e-Buy system to vendors holding contracts under a particular Federal Supply Schedule. In the solicitation, the agency specified that quotations must be submitted electronically to a contract specialist (whose email address was provided) by no later than 10:00 a.m. on a particular day. On the due date, the contractor allegedly submitted its quote to the contract specialist’s email address at 9:55 a.m. and also uploaded its quote to the e-Buy system. According to the agency, the contractor’s email was caught by a series of email security services that sit between the DHS headquarters and the Internet and was never transmitted to the contract specialist. Rather, it was deleted by the DHS security system within a week per standard procedures. The contractor did not follow up with the agency until more than a month later, at which point it learned that its offer was never received and award had been made to another party.

The GAO rejected the contractor’s arguments that its quote should be considered timely submitted because it was uploaded to the e-Buy system and because it emailed the contract specialist with its quote five minutes before the submission deadline. The agency was not notified of the contractor’s submission to e-Buy and, furthermore, e-Buy was not the designated destination for the quote. As for the email caught by the spam filter, the GAO concluded that the record was clear that the contract specialist did not receive the contractor’s quote by the submission deadline. In addition, because the email was deleted as a matter of course from the DHS system, the GAO was not able to verify that the email sent by the contractor to DHS actually contained the quote. Ultimately, the GAO denied the protest.

Advanced Decisions Vectors provides several useful lessons for contractors when submitting an offer, including:

- If you have any questions or concerns about submitting an offer electronically, contact the agency well in advance of the deadline to resolve those questions or concerns. This can be done through the question and answer process or by contacting the point of contact designated in the solicitation directly.
- Submit your offer as early as possible. This will give the agency adequate time to confirm receipt and the contractor sufficient time to respond to any technical issues that may arise with the submission. (The GAO in *Advanced Decisions Vectors* noted that protester did not receive the confirmation promised in the solicitation.)
- If you do not receive written confirmation that the agency has received your offer before the submission deadline, contact the agency. In *Advanced Decisions Vectors*, the GAO did not look kindly on the fact that the contractor took no steps to ensure that its quotation was received by the agency until more than a month after submission.
- If after contacting the agency to confirm receipt you do not receive a timely answer, send the offer again. As the GAO emphasized, the responsibility is on the offeror to submit the offer in time.

- Confirm that you are submitting the offer to the proper recipient, location, or email address identified in the solicitation. If the offer is submitted to the wrong location, even if it was submitted by the deadline, this will not help you.

These steps can protect against an otherwise timely proposal getting caught in an agency’s spam filter and, unbeknownst to the offeror, never reaching the addressee and being disqualified or not considered for award.