

THE EMAIL MISTAKE-REDUX

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This blog has previously noted the importance of confirming that any proposal submitted by email has been received either through a return email or a telephone call to the intended recipient. See blog on this site “The Email Mistake” (Jan 18, 2016). bFollow this sequence from a recent Government Accountability Office (“GAO”) bid protest to see how strange the whole email process can get. This protest concerned an Air Force (“USAF”) cyber security/cloud migration contract, *ManTech Adv. Sys. Int’l Inc.*, B-414985, Oct. 20, 2017.

The solicitation stated that proposals must be submitted electronically via email to the contract specialist at CSIACTAT@us.af.mil no later than 1:00 pm Eastern time on July 17, 2017.

- 1:25 pm-ManTech sent its proposal via email to CSIACTAT@us.af.mil and received a receipt in its Outlook Delivery confirmations
- 1:32 pm-ManTech, not having received an acknowledgement that the USAF had received its proposal, contacted the USAF and was informed that the proposal was not in the CSIACTAT@us.af.mil mailbox.
- 1:37 pm – ManTech re-sent the email to the CSIACTAT@us.af.mil mailbox and also sent the proposal via email directly to the agency employee it had spoken to and to the contract specialist, again receiving confirmation of receipt through Outlook.
- 1:49 pm – The USAF informed ManTech that its proposal did not reach the CSIACTAT@us.af.mil mailbox.
- 1:59 pm – ManTech removed the cover letter and again re-sent the email with the proposal, and one minute later received confirmation of delivery through its Outlook delivery confirmations.
- 2:01 pm – The contracting officer instructed ManTech not to send further e-mails because the deadline for receipt of proposals had passed.

Subsequently, the USAF informed ManTech that the agency had not received its proposal in the CSIACTAT@us.af.mil mailbox, and ManTech’s proposal was not considered for award.

ManTech protested, stating its proposal had been timely sent directly to the agency’s designated mailbox. The USAF explained what happened as follows:

- The ManTech proposal was never received in the CSIACTAT@us.af.mil mailbox.
- When an email is sent to any recipient that is part of the Department of Defense, it is first scanned by the entire email security gateway (“EEMSG”) for malicious content. EEMSG delivers the email to the recipient’s email exchange server if no malicious content is found.
- The recipient’s email server then performs additional scans based on the recipient’s policies
- The USAF reported that ManTech’s emails were received by EEMSG, which scanned them and attempted to deliver them to the specified Air Force address,

CSIACTAT@us.af.mil. However, they were rejected by the Air Force server, and EEMSG cannot initiate a connection to the internet to advise the sender of the failure.

Did GAO have any sympathy for the protester? Absolutely not. GAO repeated what it has said (and the FAR says) that it is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and to show that it was delivered. An agency has no obligation to consider a proposal where there is no evidence that the proposal was "actually received." ManTech could not establish that the proposal was actually delivered to the designated Air Force address (CSIACTAT@us.af.mil) prior to the time for receipt. Therefore, GAO said the agency could not consider ManTech's proposal. The GAO further noted that it appeared that the Air Force email system was operating properly because the agency had successfully received six proposals in the CSIACTAT@us.af.mil mailbox.

This is a difficult protest outcome to reconcile with the guiding principles for the Federal Acquisition System, which state:

- (b) The Federal Acquisition System will
 - (1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example [] (iii) Promoting competition;[and]
 - (3) Conduct business with integrity, fairness, and openness....

FAR 1.102(b).

It appears that the Air Force "locked the door" of its email system while ManTech was seeking to get in. The GAO has frequently stated that a proposal that is received late may be considered if the late receipt is caused by mishandling at the government installation. E.G., *Russo & Sons, Inc.*, B-280948, Dec. 11, 1998, 98-2 CPD ¶141. The ManTech case could be contrasted with *Hospital Klean of Texas, Inc.*, B-295836, April 18, 2005, 2005 CPD ¶ 185. In that case, agency personnel never heard a delivery service (Federal Express) attempting to make a delivery of a proposal on Saturday—the due date. The agency was closed on that day and there were no instructions posted on how to make late deliveries, but the contracting personnel were supposed to be listening for possible deliveries. The agency received the proposal on Monday, two days late, and the GAO said the agency properly considered the late proposal. The GAO stated that agency action was the paramount cause of late delivery and consideration of the late proposal did not compromise the procurement process because the proposals were not publicly opened and the proposal stayed with Fedex, unopened, until delivered. Somehow, it seems the GAO might have looked more closely at the reason why the USAF CSIACTAT@us.af.mil mailbox had rejected ManTech's proposal. If the USAF server was at fault, it's not clear there would have been any compromise to the procurement process if the contracting officer had requested that the proposal be sent to another email.

In any event, offerors should use caution when emailing proposals, and always get a formal receipt *from the recipient*, or telephone the contracting officer and confirm that he or she received the proposal.

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