



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Sea Box, Inc.

File: B-291056

Date: October 31, 2002

James J. McCullough, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Vera Meza, Esq., and Capt. Gary Bilski, U.S. Army Materiel Command, for the agency. Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected proposal as late is denied where proposal was submitted electronically, and was not received at the initial point of entry to the government infrastructure by 5:00 p.m. 1 working day prior to the deadline for submitting proposals; the exception that permits consideration of late proposals that are received at the government installation, and under the government's control, prior to the deadline for submitting proposals, is inapplicable to proposals submitted electronically.

DECISION

Sea Box, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. DAAE07-02-R-S104, issued by the U.S. Army Materiel Command (AMC) for a quantity of container roll-in/out platforms.

We deny the protest.

The RFP required offerors to submit proposals by 1:00 p.m. local time, July 15, 2002, in an electronic format, and provided that they could be delivered either by hand (for example, on floppy discs or CD ROMS) or by electronic means such as e-mail or datafax. In the case of e-mail submissions, offerors were to submit proposals to a specified e-mail address. The RFP specifically referred to Federal Acquisition Regulation (FAR) § 52-215-1, Instructions to Offerors, and, in particular directed offerors' attention to paragraph (c)(3) of that provision, which in relevant part provides:

(3) Submission, modification, revision, and withdrawal of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(1) 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; or

(2) There 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

(3) It is the only proposal received.

The facts of this case are not in dispute. The record shows that approximately 11 minutes before the 1:00 p.m. deadline for submitting proposals, the protester commenced the transmission of seven e-mail messages comprising its proposal. All seven messages arrived at the agency’s initial point of entry (a Unix mail relay host server) between 8 and 10 minutes before the deadline. The e-mail messages were held at the initial point of entry for periods ranging from approximately 17 to 33 minutes, at which point they were forwarded to an Internet virus scanning server, then to a mail distribution server, and finally to the e-mail address specified in the solicitation. The proposal ultimately arrived at the e-mail address between approximately 7 and 24 minutes after the 1:00 p.m. deadline for submitting offers, and the agency therefore rejected it as late.

Sea Box does not dispute that its proposal could not be accepted under the first exception, FAR § 52.215-1(3)(ii)(A)(1), since it was not transmitted by 5:00 p.m. the working day before the due date. See PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ __ at 2-3 (electronic proposal transmitted 13 minutes prior to deadline for submitting proposals properly rejected). Sea Box argues, however, that its proposal nevertheless could be accepted under the second exception, FAR § 52.215-1(3)(ii)(A)(2). In this regard, the protester notes that its entire proposal

arrived at the initial point of entry for electronic proposals prior to the deadline for submitting offers, and was out of the protester's control and in the government's control approximately 8 to 10 minutes prior to the deadline for submitting proposals. Sea Box asserts that the fact that it took several minutes for the proposal to be transmitted from the initial point of entry to the final electronic destination should not result in its proposal being rejected.

We are unpersuaded by Sea Box's argument. While the second exception may be broad enough to encompass situations involving electronic commerce delivery methods, we do not read the regulation as providing two alternative means for determining whether a late electronically transmitted proposal may be accepted. The first exception applies, by its express terms, to situations where a proposal has been submitted by an electronic commerce method, and unqualifiedly permits such a late proposal to be considered for award only if it was received at the initial point of entry to the government infrastructure no later than 5:00 p.m. the preceding working day. Although not expressly stated in the regulation, we think the second exception necessarily applies only to proposals delivered by other than electronic means. This is so because, under the protester's alternative interpretation, late electronically transmitted proposals could be considered for award under the second exception whether or not they were received at the initial point of entry by the preceding working day; this would essentially render the first exception a nullity. Since the first exception expressly applies to electronically transmitted proposals, there is no reason to assume that such a result was intended. Moreover, such an interpretation would be inconsistent with the fundamental principle that statutes and regulations must be read and interpreted as a whole, thereby giving effect to all provisions. See Waste Mgmt. of North Am., B-225551, B-225553, Apr. 24, 1987, 87-1 CPD ¶ 435 at 5.

We conclude that the two exceptions are complementary, each addressing the circumstance of a late proposal, depending upon the method of proposal submission. Since Sea Box's electronically transmitted proposal was received at the specified e-mail destination after the time set for receipt of proposals, it is a late proposal; since it was not received at the initial point of entry by 5:00 p.m. the day before proposals were due, the late proposal cannot be considered for award.

The protest is denied.

Anthony H. Gamboa
General Counsel