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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Federal Acquisition Services Team, LLC

File: B-410466

Date: December 31, 2014

S. L. England, Esq., for the protester.
Capt. Heather N. Corrothers, and Capt. Matthew W. Ramage-White, Department of the Air Force, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's decision not to consider proposal is denied where protester attempted to submit its proposal prior to the closing time but the transmitting email was rejected as undeliverable by the agency's server for exceeding the applicable size limitation, and the proposal cannot be located on the agency's systems; to the extent the protester also contends that problems with the agency server's implementation of the solicitation's limitation on size of proposal submissions caused the problems here, the record does not support a conclusion that there was a systemic failure of the agency's systems for receiving proposals.

DECISION

Federal Acquisition Services Team, LLC (FAST), protests the U.S. Special Operations Command's (SOCOM) failure to consider its proposal under request for proposals (RFP) No. H92222-14-R-0019, for acquisition, procurement, and financial management support services. FAST asserts that its proposal, which was transmitted by email, was improperly rejected after the protester attempted to timely submit the proposal and it was "bounced back" by the agency's server for exceeding the applicable size limitation for emails. In the protester's view, the problem occurred as the result of a "systemic failure" of the agency's systems, and the agency therefore should consider the proposal.

We deny the protest.

BACKGROUND

The RFP here was posted on FedBizOpps on July 30, 2014. On September 4, the agency amended the solicitation to require that all proposal submissions be emailed to a designated SOCOM email address, but limited the maximum size of “any files coming through on any one email” to 20 megabytes (MB). RFP, Amend. No. 2, at 6-7; see Contracting Officer (CO) Statement (COS) at 2. A subsequent amendment extended the proposal due date to 4:30 p.m., Eastern Time, September 15, 2014. RFP, Amend. No. 4, at 4.

At 11:56 a.m. on September 15, the day proposals were due, FAST transmitted its proposal via email to the SOCOM email address designated for receipt of proposals. Protest at 2, attach. 2; COS at 4. This email, however, did not reach the designated SOCOM email address, but was rejected by a Defense Information Systems Agency (DISA) server, the entry point into the Department of Defense email system. Protest at 3, attach. 8; COS at 4. A DISA engineer reports that FAST’s email was “bounced” back to its sender with an error message advising that the email size was too large to be received by the destination server. DISA Engineer Declaration at 1; see Agency Report (AR), Tab 14, Message Details. In this regard, the DISA engineer reports that the size of FAST’s email was 24.84 MB, well in excess of the 20 MB limit established by RFP amendment No. 2. Id.

FAST acknowledges receipt of, and attached to its protest, the reply email marked as delivered at 12:02 p.m. on September 15, advising that its message was “undeliverable,” due to “size limit exceeded.” Protest, attach. 8; see COS at 6. FAST, however, did not make a further attempt to submit its proposal before the solicitation’s closing time. Supp. Agency Report, Dec. 8, 2014, at 1.¹ Rather, on September 15 and 16, after the solicitation closed, FAST made several telephonic and email attempts to verify receipt of its proposal. Protest at 3-4; see COS at 3-4; AR, Tabs 6-9.

The contracting officer reports that, although the agency received 15 proposals by the closing time on September 15, no proposal from FAST was received by SOCOM. COS at 2, 7. After verifying with communications personnel that FAST’s September 15, 11:56 a.m. email did not make it onto any SOCOM server,² the

¹ The record indicates that on September 15, after closing, FAST attempted to forward its proposal, not to the designated SOCOM email address specified in the RFP, but rather to the contracting officer’s and another contracting official’s email addresses. Protest, attach. 3. This email also was rejected due to “size limit exceeded.” Protest, attachs. 9-10; see Comments, Dec. 9, 2014, at 2.

² See DISA Engineer Declaration at 2 (“The content of the email itself does not exist on equipment belonging to DISA because the email content itself transits the DISA system and is not normally stored once the message is delivered or bounced”).

contracting officer thereupon advised FAST that SOCOM had not received a proposal from it. COS at 4; AR, Tab 10, Email From Agency to FAST, Sept. 17, 2014. This protest followed.

DISCUSSION

FAST asserts that its proposal was improperly rejected since it was submitted more than four hours prior to the closing time for receipt of proposals. FAST also contends that its transmission email was only 17.929 MB in size, less than the solicitation's 20 MB limit, and thus should have been accepted by the agency. In addition, FAST asserts that proposal emails from other offerors may also have been improperly rejected.³

The agency, relying on DISA's records, responds that FAST's email with proposal totaled 24.84 MB and the other offeror's email totaled 21.39 MB, and thus "at the time [they] entered the Government computer system," both were over the 20 MB limit set forth in the RFP. COS at 6; Supp. AR, Dec. 3, 2014, at 8.

As an initial matter, the record clearly indicates that no proposal was received by SOCOM from FAST. It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. Federal Acquisition Regulation (FAR) § 15.208; Lakeshore Eng'g Servs., B-401434, July 24, 2009, 2009 CPD ¶ 155 at 4. Here, as noted, the record indicates that FAST's proposal was rejected ("bounced") by the agency's server; was never received at the agency email address designated for receipt of proposals; and can not be retrieved from the agency's servers. We have consistently declined to require an agency to consider a proposal where, as here, there is no evidence that the proposal was "actually received." See, e.g., DJW Consulting, LLC, B-408846.3, Dec. 18, 2013, 2014 CPD ¶ 77 at 4 (search of servers did not identify transmittal email); Latvian Connection Trading and Constr., LLC, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 3 (thorough searches of agency's email system "did not result in any finding of the protester's proposal"); International Garment Processors, B-299674, et al., July 17, 2007, 2007 CPD ¶ 130 at 7 (check of facsimile machines provided no evidence submission was actually received at the designated location). We decline to do so here.

Moreover, we need not resolve the dispute between FAST and the agency about whether the FAST submission was under 20MB. Although DISA disputes FAST's

³ In this regard, another offeror advised the contracting officer that it had attempted to submit its proposal in a single email totaling 17 MB, but its email had also been rejected as exceeding the size limit. Unlike FAST, however, this offeror then divided its proposal into two smaller emails which were then timely submitted and received before closing. CO Supplemental Statement, Nov. 26, 2014, at 1.

contention, FAST received an “undeliverable” bounce back message more than four hours prior to the closing time. Other offerors successfully responded to messages indicating their submissions were undeliverable by modifying their submissions and resending them; FAST could have done so as well.

FAST further asserts that the agency’s rejection of its proposal resulted from a systemic failure of the agency’s systems, as evidenced by the agency’s rejection of not only its proposal, but also at least one other proposal as oversized when in fact they were not. In this regard, FAST notes that we have sustained protests where the protester demonstrated that the agency’s systems suffered a “systemic failure” that violated an agency’s obligation to have procedures in place to reasonably safeguard proposals or quotations actually received and to give them fair consideration. See, e.g., S.D.M. Supply, Inc., B-271492, June 26, 1996, 96-1 CPD ¶ 288 at 4-5; East West Research, Inc., B-239565, B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, aff’d, Defense Logistics Agency--Recon., B-239565.2, B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298. A finding that a proposal or quotation was not received due to a “systemic failure,” however, requires more than “the occasional negligent loss” of a proposal or quotation. See East West Research, supra, at 4. For example, in S.D.M. Supply, Inc., supra, a systemic failure was found when the electronic contracting system in use at that time malfunctioned, resulting in all quotations submitted through the system not being received by the agency. Id. at 4-5. Further, the agency in that case conceded that similar failures had occurred for other solicitations issued by the agency. Id. at 4. Similarly, in East West Research, Inc., supra, the agency lost two quotations from the same offeror within less than one week, with “no explanation” for the losses. Id. at 4-5.

Such circumstances are not present here. Rather, the agency successfully received 15 proposals, in 32 total emails containing proposal information. COS at 2; Supp. AR, Dec. 3, 2014, at 8. The record also shows that three proposals initially were rejected by the SOCOM server on September 15 for exceeding the size limit, but two of the proposals were successfully resubmitted by means of smaller emails. Supp. AR, Dec. 3, 2012, at 2-4. Only FAST made no attempt to resubmit its proposal prior to closing. Id. at 7-8. Thus, even if there were problems with respect to the agency server’s implementation of the email size limitation, those problems did not amount to a “systemic failure.” All offerors that diligently pursued submission of their proposals were eventually successful, and the agency received 15 timely proposals.

The protest is denied.

Susan A. Poling
General Counsel