



Decision

Matter of: AttainX, Inc.

File: B-420313

Date: January 31, 2022

Daniel J. Strouse, Esq., Cordatis LLP, for the protester.
Zachary D. Prince, Esq., Aaron A. Kor, Esq., Smith Pachter McWhorter PLC, for Reston Consulting Group, the intervenor.
James Rhodes, Esq., John L. Guinan Jr, Esq., Department of Commerce, for the agency.
Christopher An, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency acted improperly by failing to consider a quotation that was timely submitted to the agency is denied. While the protester properly emailed the quotation to the address specified in solicitation, the email was quarantined by the agency's email server, never received by the contracting personnel, and discovered well after the award of the contract. Absent any evidence in the record of a systemic failure or problem, or that any other vendor's quotation was blocked, there is no basis to conclude that the agency acted improperly.

DECISION

AttainX, Inc. of Herndon, Virginia, protests the issuance of a task order to Reston Consulting Group of Reston, Virginia, under request for quotations (RFQ) No. 1305M2-21-Q-FKS6-0413, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for information and data management services in support of the agency's Science Information Division. The protester contends that the agency failed to consider its timely submitted quotation.

We deny the protest.

BACKGROUND

On May 5, 2021, NOAA issued the RFQ seeking a contractor to provide information management services with a focus on application development and data management

services to support the agency's Office of Science and Technology, Science Information Division. Agency Report (AR), Tab 1, RFQ at 2. The contract specialist at the time, Ms. X¹, emailed 12 companies, including the protester and awardee, inviting them to submit quotations. AR, Tab 2, Invitation to Submit Quotation, at 1.

All 12 companies were Women Owned Small Businesses with blanket purchase agreements (BPAs) under NOAA's Mission Information Technology Services multiple award BPA program. RFQ at 1. In accordance with the BPA ordering guide, the agency issued the solicitation to these companies through the General Services Administration's Federal Supply Schedule for information technology professional services, under Federal Acquisition Regulation (FAR) subpart 8.4. *Id.* at 2; Contracting Officer's Statement (COS) at 2.

The RFQ established May 17, 2021 at 2:00 p.m. Eastern Time as the due date for quotations, with all quotations to be submitted by email directly to the contract specialist. RFQ at 24. Subsequently, the agency amended the due date to May 27, at 2:00 p.m. Eastern Time. AR, Tab 8, RFQ amend. 2 at 1. As relevant, the RFQ included FAR provision 52.212-1, Instruction to Offerors-Commercial items; however, the RFQ eliminated section (f) of the provision, concerning late submissions, in its entirety.² RFQ at 24.

The record reflects that AttainX emailed its quotation to the address specified in the solicitation on May 27 at 12:10 p.m. and shortly thereafter received a confirmation of delivery receipt with the following message: "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: [XXX]- NOAA Federal ([XXX.XXX]@noaa.gov)." AR, Tab 17, Delivery Status Email at 1.

The record also reflects that NOAA's contract specialist received quotations at the address specified in the solicitation from eight different vendors by the closing date, to include the quotation from Reston Consulting; however, the AttainX quotation was not received at Ms. X's email address. AR, Tab 9, Quotation Evaluations.

While it was evaluating quotations, NOAA appointed Ms. Y as the contract specialist due to the pending departure of Ms. X from the agency. *Id.* at 1. After Ms. X left the agency, under the agency's standard practices, Ms. X's email account was suspended on June 22. Office of Chief Information Officer Statement at 3.

¹ GAO does not generally disclose the names of specific individuals. Here, and throughout this decision, we use the pseudonym Ms. X to refer to the former contract specialist and Ms. Y to refer to the contract specialist appointed during the competition.

² This provision establishes that late proposals or quotations may not be considered except under certain circumstances set forth in the provision. See FAR provision 52.212-1(f). However, because the agency expressly removed the provision from the solicitation, its application is not relevant to the disposition of the protest and is not discussed further. RFQ at 24.

Unaware that Ms. X had left the agency, AttainX sent Ms. X a series of emails inquiring about the status of the procurement starting on August 16. Comments, exh. 5, Emails at 1. In response to its August 16 email, AttainX, received an automatic reply from the agency indicating that AttainX's email was "undeliverable"; the message also indicated that "noaa.gov suspects your message is spam and rejected it" and "550 permanent failure for one or more recipients ([XXX.XXX]@noaa.gov:550 5.7.1 unrecognized address." Comments, exh. 6, Email at 1. AttainX resent its message to Ms. X the next day and did not receive a reply. Comments, exh. 7, Email at 1. On August 24, AttainX again attempted to contact Ms. X via e-mail, and again received an undeliverable reply message from the agency. Comments, exh. 8, Email at 1; Comments, exh. 9, Email at 1. Yet again on September 2, this time from a different email account, AttainX attempted to contact Ms. X, but, as with its August 17 message, AttainX did not receive a reply from the agency. Comments at 6.

On September 15, the newly assigned contract specialist, Ms. Y, emailed Reston Consulting indicating that its quotation had been selected for award. The agency emailed Reston Consulting a finalized copy of the task order on September 22.³ AR, Tab 10, Award Email at 1; AR, Tab 12, Award Email 2 at 1-2; AR, Tab 13, Task Order, at 1.

On October 18, AttainX sent an email to Ms. Y inquiring about the status of the RFQ.⁴ Comments at 5-6. After a series of emails, NOAA's new contract specialist advised AttainX that they had not received a quotation from the firm. AR, Tab 18, Email Exchange at 1-7. In response, to demonstrate that it had delivered its quotation to the email address specified in the solicitation, the protester forwarded a copy of the May 27 email message it had sent to the agency as well as the delivery confirmation. On October 20, Ms. Y responded to AttainX as follows:

I know we have been having issues with emails sometimes being quarantined and we don't see the quarantined emails. We did begin including language in RFQs encouraging contractors to contact the listed specialist to confirm receipt of quote prior to quote due date and time. [Ms. X] would have responded to each vendor that submitted a quote confirming receipt of said quote, and it does not look like AttainX received such confirmation. I can only assume AttainX's quote ended up being quarantined and therefore was never viewed by [Ms. X]. [Ms. X] is no longer with NOAA so there isn't a way to go back through her emails. I apologize for the inconvenience.

Id. at 1.

³ The agency informed Reston Consulting that the email served as its confirmation of award with a contract start date of September 15. AR, Tab 10, Award Email at 1.

⁴ AttainX explains that it learned of the need to contact Ms. Y after receiving information on a different, yet related matter. Comments at 5-6.

This protest followed on October 21.

In response to this protest, the agency attempted to ascertain what happened to AttainX's May 27 email with its quotation. After further investigation, the agency found the email within the agency's email archive system. AR, Tab 19, Archived Deleted Email, at 1. The agency discovered that, instead of being delivered to the intended recipient's email box, AttainX's email had been held in quarantine by the agency's email system. *Id.* at 1; MOL at 7.

DISCUSSION

The protester contends that it timely submitted its quotation to the email address specified in the solicitation and that the agency improperly failed to consider AttainX's quotation. Protest at 3. In response, the agency first argues that the protest should be dismissed as untimely, and alternatively, argues that even if the protest is timely, the protest is without merit because the agency never received AttainX's quotation. For the reasons discussed below, we deny the protest.

Timeliness

The agency argues that the protest is untimely because AttainX failed to diligently pursue information necessary to support the basis of its protest. Memorandum of Law (MOL) at 9. In this regard, the agency argues that AttainX waited almost 5 months after quotations were due on May 27 to confirm receipt of its quotation on October 18 (when AttainX sent an email to the new contract specialist to seek confirmation of receipt of its quotation). *Id.* at 10.

Our Bid Protest Regulations require that protests--other than those based on alleged solicitation improprieties--shall be filed not later than 10 days after the basis of protest was known, or should have been known. 4 C.F.R. § 21.2(a)(2). While protesters are required to diligently pursue all information that may give rise to protest grounds, *HG Properties A, LP*, B-290416, B-290416.2, July 25, 2002, 2002 CPD ¶ 128 at 5; *Professional Rehab. Consultants, Inc.*, B-275871, Feb. 28, 1997, 97-1 CPD ¶ 94 at 2, we resolve doubts regarding timeliness in favor of protesters. *Sigmatech, Inc.*, B-296401, Aug. 10, 2005, 2005 CPD ¶ 156 at 5; *Precise Constr. Mgmt.*, B-278144.2, Feb. 24, 1998, 98-1 CPD ¶ 63 at 2.

Here, although the record reflects an extended period of time between the due date for quotations and when the protester successfully made contact with the agency about the status of its quotation, we cannot conclude that the protester failed to diligently pursue this information. First, the record does not suggest that the protester was initially aware of a problem concerning the receipt of its quotation in May. As quoted above, the record reflects that the protester received an automated delivery confirmation message on May 27, the day quotations were due, indicating that "delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

[XXX.XXX] - NOAA Federal ([XXX.XXX]@noaa.gov).” AR, Tab 17, Delivery Status Email at 1. We conclude that AttainX reasonably viewed this message as an indication that its quotation had been received by the agency, since the message identified the delivery to the intended recipients as “complete.” Nonetheless, we note that this response did not unambiguously establish that the message had been received given the additional language noting that “no delivery notification was sent to the destination server.”

Second, the record reflects that AttainX pursued this matter beginning in August by repeatedly inquiring about the status of the procurement, but did not receive a response from the agency. Comments at 6. While the protester is unable to furnish call records, the record is replete with the protester’s efforts to email the agency in August and September. Comments, exhs. 5-9. Because the protester’s repeated efforts to learn information about the procurement were frustrated by internal staffing changes within the agency, we are unwilling to conclude that AttainX failed to make a good faith effort to diligently pursue this information. As noted above, we resolve doubts regarding timeliness in favor of protesters. See *Sigmatech, Inc., supra*. Accordingly, we will not dismiss this protest as untimely.

Consideration of the Quotation

Turning to the merits of the protest, AttainX argues that the agency should now consider its quotation because it was timely sent, and timely reached the agency. Protest at 2. In this regard, the protester points to the automated response it received on May 27 confirming that delivery of its emailed quotation was “complete.”⁵ AR, Tab 17, Delivery Status Email at 1. The protester also points to the agency’s own investigation of the matter, which, according to the protester, clearly demonstrates that the agency received the quotation before the due date specified in the solicitation. AttainX contends that since there is no dispute the agency received its email, the quotation should be considered by the agency. *Id.* at 1-2.

In regard to the second prong of the protester’s argument, the record confirms that the agency’s internal investigation discovered AttainX’s email with its quotation in an agency email quarantine folder. AR, Tab 19, Archived Deleted Email, at 1. Specifically, the agency found that the email had been received, but was quarantined by the agency’s email system.⁶ *Id.* at 1; MOL at 7.

⁵ The parties dispute whether this email message serves as a delivery confirmation of the agency’s receipt of the quotation. We do not need to address this dispute, however, because even if our Office finds that it does constitute a confirmation of delivery to the agency’s initial server, it is not relevant to our conclusion because, as discussed below, the agency did not discover AttainX’s quotation until several months after it had issued the task order to Reston Consulting.

⁶ The agency explains that it uses a suite of electronic applications provided by Google. The agency’s Service Delivery Division manages the Google system and is responsible

While acknowledging receipt of the email, the agency nonetheless argues that this protest should be denied because the quotation was not received by the agency's contracting personnel. MOL at 1-2. Because the quotation never reached the email address identified in the solicitation, the agency argues that it was never received by the intended recipients, and should not be considered now.⁷

As a general matter, it is an offeror's responsibility to deliver its proposal or quotation to the proper place and the protester has the burden to show that it timely delivered its submission to the agency at the specified address. *ManTech Advanced Sys. Int'l, Inc.*, B-414985, Oct. 20, 2017, 2017 CPD ¶ 324 at 3; *see also*, *Blue Glacier Mgmt. Group, Inc.*, B-412897, June 30, 2016, 2016 CPD ¶ 177 at 5; *Latvian Connection Trading & Constr., LLC*, B-402410, Feb. 25, 2010, 2010 CPD ¶ 58 at 2.

Here, the record demonstrates that the protester sent its quotation to the address specified in the solicitation, however, it was retained in the agency's email server in a manner that made it inaccessible to the cognizant contracting personnel through standard means and, as a result, they were unaware of AttainX's quotation before award. While the quotation was ultimately found within the agency's server infrastructure, after an agency investigation prompted by this protest, the discovery and ultimate recovery of AttainX's email did not occur until approximately two months after the agency had issued the task order to Reston Consulting.

Although the agency subsequently advised AttainX that it had been having "issues with emails sometimes being quarantined," it is not apparent that this was a known problem

for the operation of its applications across all of NOAA. MOL at 7. Further, the agency explains that Google uses proprietary algorithms to detect email transmissions that are potentially harmful or malicious to end users and labels them as "spam." *Id.* From there, these "spam" messages are diverted to a quarantine system and not delivered to intended recipients. *Id.* The messages are retained in quarantine for 30 days and only accessible to the Service Delivery Division. *Id.* The agency represents that the intended recipients do not have access to the quarantined emails. *Id.* After 30 days, the spam emails are moved to an archive, and again are only accessible by the agency's Service Delivery Division. *Id.*

⁷ While the protester argues for application of the "government control exception" because its email was retained within the agency's servers, the argument is misplaced. The government control exception is set forth under FAR provision 52.212-1(f) and concerns the acceptance of late proposals received prior to award. *Blue Glacier Management Grp., Inc.*, *supra.* at 5. The RFQ did not, however, include this FAR provision. In fact, as noted above, the agency expressly deleted this provision from the solicitation. RFQ at 24.

at the time the agency received quotations under the solicitation.⁸ There is also no indication in the record that other vendors for this procurement experienced similar problems. Thus, there is no evidence in the record to support a conclusion that this email was lost due to a systemic problem or failure with the agency's systems. Because no discernable fault lies with either party, we find the circumstances presented by this case to be most closely analogous to those cases where an offer or quotation reaches the agency, but is misplaced and subsequently discovered by the agency after award. While it is unfortunate, we have recognized that even with appropriate procedures in place, an offer or quotation can be lost or misplaced. See e.g., *Plaza Home Maintenance*, B-243859, July 30, 1991, 91-2 CPD ¶ 103.

In such cases, we have concluded that a protester is not entitled to relief absent evidence of a conscious or deliberate effort by contracting personnel to prevent selection of that firm or when the record demonstrates that the loss was not an isolated incident, but rather, was part of a systemic failure on behalf of the agency such that the procedures in place to receive and safeguard quotations cannot be considered reasonable. See, *Plaza Home, supra*. (dismissing protest when the contracting officer misplaced the protester's quotation, only to be discovered after award despite being placed in a properly addressed envelope and submitted before the quotation deadline); *but see also, 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 (sustaining protest because the agency received, and then lost, two quotations submitted by the same vendor in response to two different solicitations during a period of less than 1 week). The agency's need for an orderly and expeditious fulfillment of its requirements weighs against our Office disturbing the award under these circumstances. See *Plaza Home, supra*. As a result, we have no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez
General Couns

⁸ As noted above, the agency advised AttainX that it has started to include RFQ language encouraging firms to contact the listed contract specialist to confirm receipt of quotations prior to the due date and time for receipt of quotations precisely because of the issues the agency had with emails being quarantined by the agency's email system. We note that the RFQ at issue here did not include any such language.