



## Decision

**Matter of:** ICS Nett, Inc.

**File:** B-422575

**Date:** July 24, 2024

---

Kaiser Gill, Esq., Gill Law Firm, for the protester.  
Andrew Smith, Esq., Lieutenant Colonel Michael Tregle, Major Brittney Montgomery, and Major Brandon Mark, Missile Defense Agency, for the agency.  
Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging agency's decision to reject the protester's proposal as late is denied where the proposal was not timely received by the agency in a manner consistent with the terms of the solicitation and there is no evidence of systemic failure of the online portal authorized for submission of proposals.

---

### DECISION

ICS Nett, Inc., a small business of Chantilly, Virginia, protests its exclusion from consideration for award under request for proposals (RFP) No. HQ0857-24-R-0001, issued by the Department of Defense, Missile Defense Agency (MDA), for agency information management and software services (AIMSS). The protester contends that the agency should have accepted its proposal because the delay in submission was due to a system failure of the agency's online portal designated for submission of proposals.

We deny the protest.

### BACKGROUND

The RFP, which was issued on November 6, 2023, and subsequently amended five times, sought proposals for AIMSS as a "follow-on" contract to continue providing data management support after the expiration of MDA's incumbent contract. Agency Report

(AR), Tab 8b, RFP at 1;<sup>1</sup> Contracting Officer's Statement (COS) at 2, 4. The RFP contemplated award of a single indefinite-delivery, indefinite quantity (IDIQ) contract with resulting task orders having varied pricing arrangements including cost-plus-fixed-fee, cost-plus-incentive-fee, firm-fixed-price, fixed-price-incentive-fee, and cost. AR, Tab 8b, RFP at 49, 77.

Relevant here, the RFP instructed that proposals had to be submitted via the Procurement Integrated Enterprise Environment (PIEE) Solicitation Module.<sup>2</sup> Tab 8c, RFP at 6. The RFP, as amended, established the deadline for receipt of proposals as 5:00 p.m. central standard time (CST) on January 17, 2024. *Id.* at 1. In order to submit a proposal using the PIEE Solicitation Module, offerors must upload documents into the system, enter a PIN number, and request a One-Time Password (OTP) that the system automatically generates and emails to the proposal manager. AR, Tab 17, PIEE Program Tutorial at 6-8. The OTP is automatically generated and sent to the email address of the offeror's proposal manager once all proposal documents are uploaded and the proposal manager clicks the signature button indicating that they are ready to transmit the offeror's proposal. AR, Tab 21, PIEE Information Technology (IT) Specialist Declaration at 2 (internal citation to PIEE training materials omitted). While an OTP is valid for 15 minutes, it will be invalidated if a subsequent OTP is requested and issued. *Id.* at 4. A proposal is not considered submitted in PIEE until an offeror enters the PIN number and OTP. *Id.*

The RFP also included a statement that "CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1." AR, Tab 8b, RFP at 1; see also AR, Tab 8c, RFP, Section L, at 7 (emphasis in original omitted) ("Note: If the proposal is not received by the due date and time specified, the offeror's proposal is considered late in accordance with far 52.215-1."). Relevant here, Federal Acquisition Regulation (FAR) clause 52.215-1, Instructions to Offerors--Competitive Acquisition, provides that:

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 –

---

<sup>1</sup> Unless otherwise noted, all references to the RFP are to the most recently amended version.

<sup>2</sup> PIEE is a cloud-based enterprise platform, managed by the Defense Logistics Agency, that hosts many of the Department of Defense's enterprise procurement capabilities. The PIEE Solicitation Module allows the government to post solicitations and receive proposals in a secure environment. See Capabilities – Procurement Integrated Enterprise Environment, available at <https://www.acq.osd.mil/asda/dpc/ce/cap/piee.html> (last visited July 8, 2024).

- (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.

FAR clause 52.215-1(c)(3)(ii)(A).

At issue in this protest is whether ICS Nett's proposal, which was not completely uploaded into PIEE until it successfully input its OTP at 5:02:18 p.m. CST--approximately 2 minutes after the 5:00 p.m. closing time--was reasonably rejected as untimely.<sup>3</sup>

The record contains the PIEE system user logs for ICS Nett's PIEE activity on January 17, 2024. AR, Tab 20a, Ms. X User Log. These logs show that on that day, the system sent the protester's proposal manager--ICS Nett's contract administrator, who we will refer to as Ms. X--its first OTP at 4:58:11 p.m. CST. *Id.* The logs further show that the protester was sent a second OTP 26 seconds later at 4:58:37 p.m. CST, which the protester received at 4:58 p.m. *Id.*; Protest, Exh. 1, Interactions between ICS Nett Administrator and Contracting Officer at 1. The protester was sent a third and final OTP at 5:01:08 p.m. CST. AR, Tab 20a, Ms. X User Log. The protester submitted its proposal at 5:02:18 p.m. CST, and the PIEE system sent an automated notification to the contracting officer stating the protester had submitted a late proposal. AR, Tab 13, AIMSS Late PIEE Notification.

The protester represents that it experienced "persistent technical issues with the [OTP] system from different networks and locations under the Government's control." Protest at 3. Specifically, the protester states that it received consistent error messages which

---

<sup>3</sup> The protester, ICS Nett, filed this protest together with its subcontractor Peregrine Advisors Benefit, Inc. (Peregrine), ostensibly because both the prime and subcontractors independently were unsuccessful in completing the uploading of various portions of the team's proposal until after the closing date. The agency requests Peregrine be dismissed from this protest on the basis of Peregrine's lack of interested party status as ICS Nett's prospective subcontractor. Memorandum of Law at 1 n.1. Because our Office finds that ICS Nett's attempted transmission was untimely, we need not resolve Peregrine's standing to join ICS Nett's protest or the merits of its arguments with respect to its attempted transmission. *Cf. RELYANT Global, LLC*, B-422475, July 1, 2024, 2024 CPD ¶ \_\_ at 4 ("[W]e have explained that offerors are required to submit their complete proposals to the agency by the closing time, and timely delivery of part of a proposal does not constitute the timely submission of the proposal.")

impeded its submission process ultimately resulting in its delay of four minutes past the deadline. *Id.*

After it submitted its proposal through the PIEE Solicitation Module on January 17, 2024, Ms. X called the contracting officer and informed him that ICS Nett experienced technical difficulties with the OTP submission. COS at 5. The contracting officer requested the protester email him with an explanation of the technical difficulties the protester experienced along with any error messages the protester received. *Id.* At 5:20 pm, the protester emailed the contracting officer an explanation along with three screenshots of the OTP emails it received from PIEE. AR, Tab 11, ICS Nett Emails to Contracting Officer at 1; Protest Exh. 1 Interactions between ICS Nett Administrator and Contracting Officer. The screenshots confirmed the protester received all three OTPs but none of the messages contained the word “error.” Protest, exh. 1 Interactions between ICS Nett Administrator and Contracting Officer.

The contracting officer identified 54 timely proposal submissions from 51 different entities to the PIEE Solicitation Module in response to the RFP between 1:08:59 p.m. and 4:54:12 p.m. CST on January 17. COS at 5; see *also* Tab 21, PIEE IT Specialist Declaration at 3 (explaining PIEE system logs reflecting successful proposal submissions in response to the solicitation). The contract specialist, acting on behalf of the contracting officer, contacted the MDA E-Business service desk to determine whether the portal had experienced any outages or technical connectivity issues. COS at 6. The service desk confirmed there was no downtime during January 17, 2024. AR, Tab 16a, MKO Response Ticket; see *also* Tab 21, PIEE IT Specialist Declaration at 1 (representing that there were neither “reports of system-wide or localized outage regarding the accessibility to the PIEE portal” nor any calls to the service desk “regarding errors related to [the PIEE] Solicitation module” on January 17, 2024). On April 30, 2024, the agency notified the protester that its proposal was received late and was therefore eliminated from the competition. AR, Tab 12, NonCompliance Letter at 1. On May 9, 2024, the protester filed the subject pre-award protest.

## DISCUSSION

ICS Nett contends that its proposal should be considered timely pursuant to FAR clause 52.215-1(c)(3)(ii)(A)(2), which provides an exception to a late received proposal if “[t]here is acceptable evidence to establish that it was received at the [G]overnment[’s] installation designated for receipt of [proposals] and was under the Government’s control prior to the time set for receipt of offers.” Protest at 3; Comments at 6. The protester contends that its proposal was in the government’s possession because all proposal attachments were uploaded to the PIEE Solicitation Module prior to the 5:00 p.m. deadline, and the subsequent delay in submitting a valid OTP was the result of an alleged system issue.

The agency asserts that the protester failed to submit its proposal before the submission deadline, and the contracting officer’s decision not to consider the protester’s proposal was reasonable and in accordance with FAR clause

52.215-1(c)(3)(ii)(A). In this regard, the agency argues that consistent with GAO's prior decisions, the government control exception does not apply to electronic submissions of proposals, and, under the provisions of FAR clause 52.215-1(c)(3)(ii)(A)(1), the protester's proposal submitted after the 5:00 p.m. closing time was properly rejected as untimely. Memorandum of Law (MOL) at 5-6. We agree with the agency.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time. FAR clause 52.215-1(c)(3); *Washingtonian Coach Corp.*, B-413809, Dec. 28, 2016, 2016 CPD ¶ 378 at 4. Similarly, we view it as an offeror's responsibility, when transmitting its proposal electronically, to ensure the proposal's timely delivery by transmitting the proposal sufficiently in advance of the time set for receipt of proposals to allow for timely receipt by the agency. *Alalamiah Tech. Grp.*, B-402707.2, June 29, 2010, 2010 CPD ¶ 148 at 3; *PMTech, Inc.*, B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 4.

Here, the RFP, through its incorporation of FAR clause 52.215-1, provided that proposals not received by the contracting officer and contracting specialist by the exact time specified would be "late" and would not be evaluated. AR, Tab 8b, RFP at 1; Tab 8c, RFP Section L, at 7. With respect to electronically submitted proposals, FAR clause 52.215-1(c)(3)(ii)(A) prohibits the agency from accepting a late proposal unless (1) the contracting officer determines accepting the proposal would not unduly delay the acquisition, and (2) the agency received the proposal at the initial point of entry not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals. FAR clause 52.215-1(c)(3)(ii)(A)(1). Because ICS Nett's untimely received proposal was not received by 5:00 p.m. one working day prior to the deadline, the agency properly rejected its proposal as late.

ICS Nett does not directly grapple with the electronic submission provisions set forth in FAR clause 52.215-1(c)(3)(ii)(A)(1); rather, the protester argues instead that the agency should have accepted its proposal under FAR provision 52.215-1(c)(3)(ii)(A)(2) because its proposal was uploaded to the PIEE system, and was therefore under government control, prior to the time set for the receipt of proposals. Protest at 3. In other words, ICS Nett argues that its proposal should have been accepted as timely because the agency had control of its proposal notwithstanding the protester's inability to timely enter the OTP to complete the transmission. *Id.*

As we have addressed in previous decisions, the government control exception does not apply to electronic submissions; rather, electronic submissions are governed by FAR clause 52.215-1(c)(3)(ii)(A)(1), which provides that an electronically submitted proposal must be 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 specific for receipt of proposals. See *Sea Box, Inc.*, B-291056, Oct. 31, 2002, 2002 CPD ¶ 181 at 3; see also *SigNet Techs., Inc.*, B-417435, July 3, 2019, 2019 CPD ¶ 247 at 5. ICS Nett does not allege that its proposal was received at the initial point of entry to the government infrastructure before 5:00 p.m. one working day prior to the deadline for receipt of proposals. Accordingly, the exception to late submitted electronic proposals at FAR

clause 52.215-1(c)(3)(ii)(A)(1) does not provide a basis to sustain the protest. Although ICS Nett recognizes our view as incorporated in our decisions, it requests that we use this case as an opportunity to modify our precedent to reflect “the capabilities and practices of modern electronic submission systems.” Comments at 2-3.

We decline ICS Nett’s request to reinterpret our prior decisions. As we noted in *Sea Box*, FAR clause 52.215-1(c)(3)(ii)(A)(1) applies, by its express terms, when a proposal has been submitted by an electronic commerce method, and 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. If we were to view late electronically transmitted proposals as eligible to be considered for award under the government control exception in FAR clause 52.215-1(c)(3)(ii)(A)(2), regardless of whether they were received at the initial point of entry by the preceding working day, such a view would effectively render the provisions of clause 52.215-1(c)(3)(ii)(A)(1) a nullity. In that situation, a late electronically submitted proposal rejected under FAR clause 52.215-1(c)(3)(ii)(A)(1) could nevertheless be considered timely under FAR clause 52.215-1(c)(3)(ii)(A)(2), a result we do not believe was intended. Moreover, as we noted in *Sea Box*, 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. *VERSA Integrated Sols., Inc.*, B-420530, Apr. 13, 2022, 2022 CPD ¶ 98 at 4-5.

We note additionally as a factual matter the protester alleges that there was a technical error which caused the protester to submit its proposal late. Protest at 3. While the protester raises these factual allegations, there is no support for these allegations in the record. As noted above, when transmitting a proposal electronically, it is an offeror’s responsibility to submit its proposal sufficiently in advance of the time set for receipt of proposals to ensure proper delivery of the proposal and timely receipt by the agency. See, e.g., *GSI Constr. Corp., Inc.*, B-418967, Oct. 28, 2020, 2020 CPD ¶ 334 at 5-6 (finding no evidence that a system error frustrated protester’s ability to submit a proposal where 4 other firms were able to successfully transmit timely proposals). Here, MDA received at least 54 timely submissions that were uploaded up until six minutes before the deadline for submissions. AR, Tab 18, On-Time Offers at 1,6; COS at 5.

Further, the technical report shows that the protester did not upload its proposal to the PIEE system and receive its first OTP until two minutes before the submission deadline. AR, Tab 20a, Ms. X User Log. The protester’s evidence of an alleged technical error within the OTP system consists of three automated emails the PIEE system sent to the protester with the three OTPs. Protest ex. 1 Interactions between ICS Nett Administrator and Contracting Officer. Not only do these emails not indicate the existence of an error within the OTP system, but they also demonstrate that the system functioned properly and released the OTPs as requested to the protester. Finally, the government’s service desk confirmed through the PIEE program management officer that there was no PIEE downtime or system-wide issues on January 17, 2024. AR, Tab 16a, MKO Response Ticket. This conclusion was further supported by the system

engineer/technical lead of the PIEE program office. AR, Tab 21, PIEE IT Specialist Declaration. On this record, we find no basis to conclude that any system error precluded the protester's ability to timely submit its proposal.<sup>4</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

---

<sup>4</sup> In this regard, even if we were to consider the applicability of the government control exception to the protester's electronic submission, we would find no basis on which to sustain its protest. In the context of non-electronic submissions, we have explained that even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility to deliver a hand-carried proposal to the proper place by the proper time. *ERC Inc.*, B-405563, Nov. 18, 2011, 2011 CPD ¶ 254 at 3.

Similar to the circumstances here, we found in *RDT-Semper Tek JV, LLC*, B-408811, Dec. 9, 2013, 2013 CPD ¶ 287, that a protester's attempt to make a delivery only a couple of minutes before the time deadline was the paramount cause of the lateness, and the protester's failure to allow sufficient time to fulfill its responsibility to deliver the proposal by the proper time reasonably resulted in the rejection of its proposal. As in *RDT-Semper Tek JV, LLC*, ICS Nett's attempted delivery less than two minutes before the deadline, and its repeated requests for a new OTP, were the paramount cause of the lateness, and, therefore, would provide no basis on which to excuse its late submission. *Cf. Alalamiah Tech. Grp., supra* at 4 (finding that the primary cause of the protester's late delivery of its electronic protest was that the protester delayed attempting to transmit via email parts of its proposal 8 minutes and 3 minutes, respectively, before the closing time); *PMTech, Inc., supra* at 4-5 (same, where the protester delayed attempting to transmit its proposal until only 13 minutes before the closing time).