



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

# Decision

**Matter of:** Martin Brothers Construction

**File:** B-420797.7

**Date:** March 7, 2025

---

Douglas P. Hibshman, Esq., and Dana Molinari, Esq., Fox Rothschild LLP, for the protester.

Clark Bartee, Esq., Department of the Army, for the agency.

Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protest challenging the agency's rejection of proposal as late is denied where the protester admittedly submitted revised proposal after the stated deadline and cannot establish that the late submission was due to any improper action by the agency.

---

## DECISION

Martin Brothers Construction, Inc. (MBC), a small business of Sacramento, California, protests its exclusion from consideration for award under request for proposals (RFP) No. W912HY21R0012, issued by the Department of the Army, U.S. Army Corps of Engineers (Corps) for horizontal construction in the Corps's Galveston District and Southwestern Division. The protester challenges the agency's rejection of the firm's proposal as late.

We deny the protest.

## BACKGROUND

Using the Department of Defense's Procurement Integrated Enterprise Environment (PIEE) system,<sup>1</sup> the Corps issued the RFP on an unrestricted basis, with a portion of the

---

<sup>1</sup> The Corps describes the PIEE system as "a document repository that posts information to SAM.gov [the System for Award Management] for the solicitation" and generates automated notices to offerors when documents are posted. Contracting Officer's Statement (COS) at 1-2. The solicitation required offerors to register with the

(continued...)

awards reserved for small businesses, on March 21, 2022. RFP at 28; COS at 1.<sup>2</sup> Proposals would be evaluated using the two-phase design-build process authorized under the procedures of Federal Acquisition Regulation (FAR) subpart 36.3. RFP at 28; FAR 36.300. The solicitation contemplated award of indefinite-delivery, indefinite-quantity (IDIQ), multiple-award task order contracts (MATOCs) for 8-year terms to the offerors whose proposals were determined to represent the overall best value to the government, using a tradeoff process. *Id.* at 27-28. The RFP stated that the Corps intended to award “a target of 15” MATOCs “with the target of five (5) awards to Small Businesses for the Small Business Reserve[.]” *Id.* at 28. Task orders would be competed among the IDIQ contract holders, with the total value up to \$7 billion for the entire pool of contracts. *Id.* at 27.

For phase one of the competition, offerors were required to submit proposals to address the following evaluation factors: (1) past performance; (2) construction execution approach; and (3) organization/management team. *Id.* at 29-30. On October 16, 2023, after conducting discussions and evaluating revised phase one proposals, the agency identified 10 offerors from the unrestricted pool and 11 from the small business reserve pool--including MBC--as the most highly rated, and the Corps invited those 21 offerors to submit proposals for phase two. COS at 1, 7.

On January 19, 2024, the Corps issued amendment 13 to the RFP, requesting phase two proposals. RFP at 1. For this phase of the competition, offerors were required to submit “a technical and price proposal for a seed design/build project task order and a sample preconstruction services proposal.” RFP at 28. As with phase one, offerors were required to submit proposals through the PIEE system. *Id.* at 8-9. The agency received phase two proposals from 18 offerors, including MBC, by the March 15, deadline. COS at 2.

On June 14, the Corps entered into discussions with offerors in the competitive range. *Id.* Offerors received evaluation notices (ENs) documenting the agency’s concerns and were instructed to submit revised technical and price proposals responding to the ENs. *Id.*; AR, Exh. 10, MBC Evaluation Notice at 1. The agency subsequently issued amendment 21 to the solicitation on July 14, extending the deadline for proposal revisions to July 31 at 2:00 p.m., central time. AR, Exh. 14, RFP amend. 21 at 2.

After the deadline passed without a submission from MBC, the agency sent an email informing the company that the Corps had not received a submission from MBC. AR, Exh. 16, Email to MBC (“Have you submitted your proposal or what are your intentions?”). The protester responded that it had not received the latest amendment and stated that it would submit a revised proposal shortly. AR, Exh. 17, Email to Corps

---

PIEE system and submit proposals through the system’s portal. Agency Report (AR), Exh. 2, RFP at 9.

<sup>2</sup> References to the RFP are to the amended version included at exhibit 2 to the agency report. Citations to the record refer to the documents’ internal Adobe PDF pagination.

at 1. MBC subsequently submitted a revised proposal through the PIEE system at approximately 5:10 pm, central time on July 31. AR, Exh. 18, PIEE Receipt.

On August 28, the agency notified MBC that its revised proposal had been submitted late, and therefore the firm could no longer be considered for award. AR, Exh. 19, Agency Notice. After the Corps declined MBC's request to reconsider the exclusion of the firm from the competition, MBC filed an agency-level protest with the Corps on September 5. AR, Exh. 22, Agency-Level Protest. When the Corps denied the agency-level protest, MBC filed this protest with our Office on December 2.

## DISCUSSION

The protester does not contest that it submitted its phase two proposal revision late. Instead, MBC argues that the late submission is the fault of the agency. According to the protester, the Corps failed to ensure MBC received the email containing the ENs, and therefore failed to conduct meaningful discussions and denied MBC the opportunity to submit a revised proposal. Protest at 9-12. Although we do not specifically address all of MBC's arguments, we have considered them all and find that none afford a basis to sustain the protest.

### Timeliness

As an initial matter, the agency requests that we dismiss MBC's protest as untimely, asserting that the protest was filed more than 10 days after the protester knew that the agency had denied the firm's agency-level protest. Req. for Dismissal at 5-7. The protester responds that it timely filed the instant protest within 10 days after it received notice of the agency's denial of the agency-level protest. Resp. to Req. for Dismissal at 3-4. For the reasons explained below, we do not find dismissal appropriate under the circumstances.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Lifecare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 10-11. When a protest first has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3).

There is no dispute that MBC timely filed its agency-level protest with the Corps on September 5, 2024. Req. for Dismissal at 4; Resp. to Req. for Dismissal at 2. Nor is there any debate that the initial adverse agency action here was the agency's denial of that protest. Req. for Dismissal at 4; Resp. to Req. for Dismissal at 2. The parties, however, disagree on the timing of the protester's receipt of the agency's decision.

According to the Corps, “[o]n November 12, 2024, the Agency issued its decision on the merits denying MBC’s” agency-level protest, sending the decision “via certified mail with return receipt requested to MBC’s designated attorney” at his business address. Req. for Dismissal at 4 (parenthetical omitted). The agency produced a copy of the certified mail receipt, which reflects that a named individual (“X”) signed for receipt of the document on November 15. Req. for Dismissal, Exh. B, Return Receipt. Although the receipt does not reflect a particular time, the Corps argues that the protester should be charged with knowledge of the decision during business hours on Friday, November 15, such that any protest was required to be filed with our Office by Monday, November 25.

The protester, for its part, denies that it received the agency-level protest decision on November 15. Responding to the request for dismissal, MBC provided an affidavit from X, the individual identified on the certified mail receipt. Resp. to Req. for Dismissal, Exh. B, Affidavit of X. In that affidavit, X states that she is the “Offices Services Assistant” who handles the receipt of mail for the law firm. *Id.* X avers, however, that she never saw--nor did she sign--the certified mail receipt, and X denies that the signature on the receipt is hers. *Id.* X also explains that “[w]hen mail is delivered on the weekends, it is stored in the building mail room and picked up on Monday morning by” her. *Id.* X affirms that she picked up the agency-level protest decision from the building mail room on Monday, November 18. *Id.* In addition, the protester provided a copy of the U.S. Postal Service tracking for the certified mail, which reflects that it was delivered on Saturday, November 16. Resp. to Req. for Dismissal, Exh. A, Tracking. The protester, therefore, contends that the agency’s decision was delivered to the “office building on a weekend when the building and [the law firm’s] office were closed,” such that the protester did not have actual or constructive knowledge of initial adverse agency action until Monday, November 18. Resp. to Req. for Dismissal at 3. As a result, according to the protester, MBC timely filed the instant protest on December 2.<sup>3</sup> *Id.* at 4.

Here, the agency and protester offer competing evidence regarding the date that the agency’s protest decision was delivered to the protester. The agency submits a certified mail return receipt reflecting delivery at an unspecified time on November 15, but arguing nevertheless that it should be considered received during business hours. On the other hand, the protester submits an affidavit from the reported signatory of the receipt, denying that she had any knowledge of--let alone signed--the certified mail receipt, supported by postal service tracking information showing delivery no earlier than Saturday, November 16. Even considering the agency’s evidence in isolation, the certified mail return receipt reflects delivery on Friday, November 15 without a time of delivery--meaning that it does not conclusively establish that the protester had actual or

---

<sup>3</sup> The tenth day after November 18 was Thursday, November 28, which was a federal holiday (Thanksgiving Day). When the last day of the 10-day period is a Saturday, Sunday, or Federal holiday or another day when the Government Accountability Office (GAO) is closed, the period extends to the next business day, which here was Monday, December 2, because GAO was also closed on Friday, November 29. 4 C.F.R. § 21.0(d).

constructive knowledge of the agency-level protest decision during business hours on that day. Req. for Dismissal, Exh. B, Return Receipt.

Generally, our Office will resolve doubts regarding timeliness of a protest in favor of protesters where there is disagreement as to when the protester first knew or should have known the basis of its protest. *Deloitte & Touche LLP*, B-420038, Oct. 28, 2021, 2021 CPD ¶ 353 at 12 n.11; *MP Sols., LLC*, B-420953, B-420953.2, Nov. 21, 2022, 2022 CPD ¶ 289 at 7. Here, if we construe all the evidence offered in the light most favorable to the protester, we do not find that MBC can be charged, conclusively, with actual or constructive knowledge of its basis for protest until Monday, November 18, which would make timely the protest filed with our Office. Consequently, we do not find dismissal appropriate under these circumstances. See *Supreme Edgelight Devices, Inc.*, B-295574, Mar. 4, 2005, 2005 CPD ¶ 58 at 3 (finding “receipt of the agency’s decision on Saturday by a clerk employed by [the protester], where Saturday was not an ordinary business day for the protester and where the decision was in fact not opened or reviewed, does not constitute constructive knowledge of initial adverse agency action” and that deadline for protest began to run from next business day).

### Meaningful Discussions

Turning to the merits, the gravamen of the protester’s argument is that the agency did not engage in meaningful discussions with MBC because the Corps failed to ensure the firm received the email containing the written discussions. Protest at 9-12. The agency maintains that it properly communicated with MBC throughout the procurement, and that MBC’s “email system issues” were within the firm’s control and not evidence of any error or failure on the agency’s part. Memorandum of Law at 5-8.

As discussed above, on June 14, the Corps initiated discussions with offerors by sending emails to each firm within the competitive range. The emails included attached ENs specific to each offeror’s proposal. *Id.*; AR, Exh. 10, MBC Evaluation Notice at 1. According to the protester, MBC “did not receive this email timely as it was delivered to MBC’s ‘Spam’ folder” and went undiscovered until after MBC received notice of its exclusion from the competition. Protest at 5. The protester argues that, because the agency emailed the ENs--but did not also “issue a general notice that a key EN was issued to each offeror via email” through the PIEE system--the Corps failed to conduct meaningful discussions with MBC. Comments at 4-5.

When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving award. FAR 15.306(d); *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 4. Here, MBC does not argue that the substance of the EN, generated by the agency and emailed to the firm, failed to meet this standard. Rather, the protester contends our Office should conclude that the agency failed to conduct meaningful discussions with MBC because the Corps emailed the EN to MBC and did not follow up by other means to ensure the email was received.

Comments at 4-5. That is, according to MBC, the Corps “failed to provide the Evaluation Notices to MBC in a reliable manner, *i.e.*, via the mandatory PIEE system” and, after emailing the ENs, did not separately contact MBC through other (unspecified) means “to discuss the Evaluation Notice and ensure that all offerors were properly notified of the impending revised proposal submission date.” Protest at 9-12.

Relevant here, the solicitation required submission of a proposal data/acknowledgement sheet with various information about the offeror, including the “[n]ames, titles, email addresses and telephone numbers of persons authorized to negotiate on the Offeror’s behalf.” RFP at 18. The RFP also required offerors to register with the PIEE system, using the same email address the entity used to register in the System for Award Management (SAM.gov). *Id.* at 9.

On the proposal data/acknowledgement sheet, MBC identified its president as the one individual authorized to negotiate on behalf of the company, specifying his email address as “[DELETED]@martinbrothers.net” on the sheet. AR, Exh. 3, MBC Phase Two Proposal at 79. That specific email address is the same one used to register MBC in SAM.gov. COS at 2. To open discussions and provide the ENs, the Corps emailed the company president, at the identified email address. AR, Tab Exh. 10, MBC Evaluation Notice at 1. While the email was, in fact, received by MBC, the protester avers it was unaware of the email’s existence, because the email had been relegated to a “Spam” folder. Protest at 5.

In circumstances where the protester does not receive notice of the agency’s discussions because of an issue attributable to the protester, rather than any conduct of the agency, we have no basis to find a violation of procurement law or regulation. For example, in *Systems Analysis & Integration, Inc.*, B-416899.2, B-416899.3, Jan. 2, 2019, 2019 CPD ¶ 15, the protester argued that the agency failed to provide it with meaningful discussions because the protester did not receive the discussions letter sent by the agency. In that instance, the protester had misspelled the email address listed as the primary contact on its quotation. There, we denied the protest, concluding that while the protester had not received the discussions letter, it was through no fault of the agency. *Id.* at 3-4. Here, similarly, the agency emailed the ENs to the address specified by the protester in its proposal. Unlike *Systems Analysis & Integration, Inc.*, the protester here in fact received the emailed discussions letter. That the protester’s system relegated the email to a “Spam” folder is not a basis to find fault with the agency.

Moreover, there was no requirement--as the protester suggests--for the agency to provide the same ENs by multiple means, or to follow up with MBC about the discussions letter that had been emailed to the protester. *Id.* at 3-4; *Cf. Alion Sci. & Tech. Corp.*, B-422664, Sept. 10, 2024, 2024 CPD ¶ 216 at 6 (explaining that the agency is not required to conduct successive rounds of discussions to allow an offeror multiple opportunities to address proposal issues). In this connection, the protester asserts that the Corps should have known that “individual emails sent to offerors” were “unreliable” and made an additional effort here. Comments at 5. Our review finds no

support for this assertion. To the contrary, the record reflects that, during the phase one evaluation, the Corps similarly emailed discussion letters with ENs to offerors--including to MBC at the same “[DELETED]@martinbros.net” address--requesting revised phase one proposals by May 12, 2023. AR, Exh. 26, Phase One Evaluation Notice. The protester responded by sending an email back to the agency on May 12, notifying the Corps that MBC was submitting “an updated Volume 1” in response to the discussion letter. AR, Exh. 29, MBC Response to Phase One Evaluation Notice. Based on the record, and particularly in light of this history, we find no merit in the protester’s argument that the Corps should be required to do something more than communicate with the offeror by using the email address the offeror itself designated. We therefore find no basis to conclude that the agency did not conduct meaningful discussions with MBC.<sup>4</sup> *Systems Analysis & Integration, Inc., supra* at 3-4.

### Proposal Revisions

The protester also argues that the agency “failed to provide MBC a meaningful opportunity to submit a revised Phase Two proposal” because the agency did not ensure that MBC received the final amendment to the solicitation. Supp. Comments at 2-4. Although, the protester concedes that the final amendment (amendment 21) “was uploaded to the PIEE system”--the same manner in which the solicitation and every other amendment had been posted--MBC now argues that “[u]pload[ing] documents to PIEE and offerors actually receiving such documents timely are two separate and distinct standards.” Supp. Comments at 2.

---

<sup>4</sup> As part of this line of argument, the protester also complains that the agency “failed to send the Evaluation Notice to MBC via the PIEE system . . . which constitutes procurement error,” and that the failure “prevented MBC from receiving and responding to the issues addressed in the Evaluation Notice in a timely manner.” Protest at 6. The Corps responds to this assertion, explaining that:

the PIEE system is a document repository that posts information to SAM.gov for the solicitation and provides a system message to offerors when documents are uploaded. All documents uploaded into PIEE and any message attached to those postings by the Agency can be seen by all offerors in that phase of the acquisition. Because ENs are addressed to specific offerors to review aspects of their specific proposals as part of discussions, they are not appropriate for posting to PIEE, and nothing in the RFP or otherwise indicated that ENs would be distributed through PIEE. Thus, the Agency did not commit “procurement error” in distributing ENs via email instead of PIEE. The EN was properly sent to the “[DELETED]@martinbrothers.net” email address used by the Agency throughout the procurement to communicate with MBC, and was timely received by MBC on June 14, 2024, although placed in its “Spam” folder by MBC’s email system and not discovered by MBC until August 28, 2024.

MOL at 6 (internal citations omitted). We find the agency’s explanation to be reasonable, and the protesters’ allegation, in this regard, to be without merit.

As noted above, the protester had previously characterized the PIEE as the “mandatory” and “reliable” means of communication in connection to the MBC’s allegations concerning the agency’s failure to conduct meaningful discussions. Protest at 9. With respect to proposal revisions, MBC now contends the “the Agency failed to ever inform offerors that the PIEE system would be used to engage in communications or be used as a vehicle to provide Amendments and notices to offerors during the course of the procurement.” Supp. Comments at 3.

Putting aside the inconsistency in MBC’s arguments, the protester simply has not explained how the agency’s actions have violated any procurement law or regulation. The record reflects that the agency posted all solicitation amendments to the PIEE system. AR, Exh. 14, Solicitation amend. 14; AR, Exh. 25, PIEE Screenshot at 7. The PIEE system generated an automated notification to all offerors, including MBC, of the postings, including the final amendment establishing the deadline for proposal revisions. COS at 6.

Moreover, with respect to amendment 21 in particular, the Corps had, in fact, sent an email to all offerors—including MBC at its designated email address—to alert offerors to the posting on PIEE of the amendment, as well as reiterating, in the email, the new deadline for receipt of revised proposals. AR, Exh. 15, Amendment 21 Email at 1 (“We have released Amendment 0021 this morning. . . . Revised proposals and responses to Evaluation notices associated with this amendment will be due no later than 31 July 2024, 2:00 pm. CST.”). Here also, the protester similarly avers that this email from the Corps went to MBC’s “Spam” email folder and went unnoticed by the firm. Protest at 7. Having admittedly received this email, alerting the firm to the amendment and highlighting the deadline for revised proposals, the protester cannot argue that its failure to see and review the message was the result of any action or inaction by the agency. For the same reasons as above, we do not find that the agency was required to do anything more to communicate with offerors during this procurement. As such, this allegation is denied.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel