

GAO Backs Air Force Rejection Of Improper Bid Submission

By **Nicole Rosenthal**

Law360 (June 9, 2022, 4:07 PM EDT) -- The Government Accountability Office ruled that the U.S. Air Force reasonably rejected an intelligence solutions proposal that ran into submission issues, ruling that the government's directions were straightforward in that all materials must be uploaded electronically through a portal.

The Ulysses Group LLC, based in Charleston, South Carolina, had claimed that the Air Force was unreasonable in refusing to consider its bid proposing commercial solutions for the agency's small business innovation research program. The solicitation was also overly restrictive of competition due to a lack of alternative submission methods, the company said.

But GAO General Counsel Edda Emmanuelli Perez ruled that, since Ulysses' application was not submitted according to the Air Force solicitation's upload instructions and therefore missed the deadline, it was appropriately excluded from consideration.

"Ulysses failed to deliver its proposal to the proper place by the proper time. The complete proposal was never submitted through [the portal]," Perez wrote in Tuesday's **decision**. "Ulysses uploaded five proposal volumes ... but never transmitted those volumes to the agency; therefore Ulysses never submitted its proposal. Since Ulysses did not submit its proposal, we find reasonable the agency's decision not to consider the proposal."

While the request required all proposals to be submitted through the U.S. Department of Defense's small business technology transfer innovation portal, Ulysses was unable to upload the technical volume section of its application, Perez wrote. A short time after each upload attempt, the portal would indicate that the upload failed and, despite troubleshooting guidance from the portal's support desk and the project's contracting officer, Ulysses was unable to submit its application by the deadline. Ulysses also contended that the portal was improperly blocked by a firewall, according to the GAO's decision.

But the solicitation had included an explicit warning stating that no exceptions would be made for the submission deadline, and that the Air Force wouldn't be responsible for missed submissions due to system issues or inaccessibility, Perez noted.

The company filed a protest with the Air Force the day after bids were due on Feb. 10, only to be rebuffed on the grounds that it did not challenge the terms of the solicitation in a timely manner.

The Air Force's denial of the protest was justified since protests challenging solicitation issues must be filed before the initial proposal deadline, Perez said.

The email that Ulysses had sent to the project's contracting officer seeking an alternative submission method two days before the deadline also didn't count as an agency-level protest as it didn't specifically request relief or a ruling from the Air Force, Perez said.

"A letter or email that merely expresses a suggestion, hope, or expectation, does not constitute an agency-level protest," Perez wrote. "Ulysses gives us no reason to conclude that the failure to timely protest the ... submission requirement was due to some compelling reason beyond its control."

Perez also noted that the Air Force had produced a sworn affidavit from the portal's support desk

manager confirming that the portal was functioning normally during the time period in question, and that the agency received 667 timely proposals. In fact, Ulysses was the only offerer to report a technical issue before the submission deadline, Perez wrote, citing the affidavit.

Requests for comment from the agency Thursday were not immediately returned.

Contact information for The Ulysses Group LLC was not immediately available.

GAO attorneys Raymond Richards and John Sorrenti participated in the preparation of the decision.

The Ulysses Group LLC is represented by Andrew Lewis, who also serves as the company's president.

The U.S. Air Force is represented by Josephine R. Farinelli, Tiffany R. Schwartz and Colonel Frank Yoon.

The case is the matter of The Ulysses Group LLC, file number B-420566, before the U.S. Government Accountability Office.

--Editing by Dave Trumbore.