

## CLIENT ALERT

### Even A Little Early Can Be Late: GAO Rules that Proposal Emailed Prior to Submission Deadline but Received Minutes Afterward was Untimely

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In *Spanish Solutions Language Services, LLC*, GAO rejected Spanish Solutions' (SSLS) post-award protest of the Department of Defense's (DOD) determination that, among other things, SSLS' proposal for translation services was untimely because it was received by DOD after an 11 a.m. submission deadline. SSLS emailed its proposal to DOD at 10:54 a.m., six minutes prior to the proposal submission deadline (and had a copy of the transmittal email to prove it), but it was not received by DOD's email system until 11:08, eight minutes after the deadline. In agreeing with DOD's determination that the proposal was untimely, GAO noted that the RFP included FAR 52.212-1, Instructions to Offerors-Commercial Items, which explains that "[a]ny offer . . . 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." FAR 52.212-1(f)(2)(i). In light of the inclusion of this FAR provision, GAO explained that even if SSLS had emailed its proposal prior to the 11 a.m. deadline, "the relevant question . . . is when the email was received at the designated government office, not when it was sent." GAO reiterated that "it is 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."

The decision serves as a cautionary tale for bidders—even early, if it is not early enough, can be late. For that reason, when submitting proposals via email, bidders should submit their proposals well in advance of the proposal deadline, and, where possible, confirm receipt prior to the deadline.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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