



**G A O**

Accountability \* Integrity \* Reliability

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## Decision

**Matter of:** Guam Shipyard

**File:** B-294287

**Date:** September 16, 2004

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David J. Taylor, Esq., Tighe Patton Armstrong Teasdale, for the protester.  
George N. Brezna, Esq., and David W. Beale, Esq., Military Sealift Command, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest alleging solicitation impropriety is dismissed as untimely where protest was submitted to GAO on a federal holiday and thus is not considered filed until opening of business on the following business day, by which point the time set for receipt of quotations had passed.

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### **DECISION**

Guam Shipyard protests the terms of request for quotations (RFQ) No. N62404-04-R-0022, issued by the Department of the Navy, Military Sealift Command, for the replacement of a non-skid surface on a portion of the decks of the USS Frank Cable. The protester contends that the RFQ improperly fails to require that vendors have in place either a Master Ship Repair Agreement or an Agreement for Boat Repair.

We dismiss the protest as untimely.

The RFQ, as amended, set a quotation due date of July 6, 2004, 4:30 p.m., Far East time.<sup>1</sup> Guam Shipyard transmitted a facsimile copy of its protest to our Office at

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<sup>1</sup> While Amendment No. 0002 to the RFQ specified the due date for receipt of quotations as simply July 6, Federal Acquisition Regulation (FAR) § 52.212-1(f)(1), incorporated into the RFQ at pages 10-11, stated that:

Offerors are responsible for submitting offers, . . . , so as to reach the Government office designated in the solicitation by the time specified

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2:42 p.m., eastern time, on July 5, a federal holiday, and furnished an additional copy by e-mail at 3:22 the same afternoon. Because the protest was transmitted to our Office at a time the Office was not open for business, it was not time/date stamped until the opening of business on the following business day, i.e., 8:30 a.m. on July 6.

The agency argues that we should dismiss Guam Shipyard's protest as untimely because it was not filed prior to the time set for receipt of quotations, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004). The agency contends in this connection that our Office will consider a protest filed when time/date stamped. Here, due to the difference in time zone between the Far East and Washington, D.C. (the Far East zone being 15 hours ahead, according to the agency), it was already 7 hours after the specified closing time of 4:30 p.m., Far East time, when the protest was time/date stamped by our Office at 8:30 a.m., eastern time.

The protester argues in response that our Regulations provide at 4 C.F.R. § 21.0(g) that "[a] document is *filed* on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day," and that its protest was received (and acknowledged as received by our Office) no later than 3:22 p.m. on July 5.

This case presents two related questions pertaining to timeliness. The first is whether a time/date stamp is determinative as to the timeliness of a protest filing where other evidence clearly establishes the time that the protest arrived at our Office. The answer to this question is no. While we rely upon our time/date stamp to determine the timeliness of protest filings with our Office where other evidence clearly establishing the time that the protest arrived is absent, Peacock, Myers & Adams, B-279327, Mar. 24, 1998, 98-1 CPD ¶ 94 at 2, we will not rely upon the stamp where other acceptable evidence of earlier receipt is available, as was the case here. Our fax machine printed the time and date of receipt on each page of the protest as it was received, and these captions establish that all 11 pages of the protest were received at 2:42 p.m. on July 5. In addition, there is evidence (in the form of an e-mail message confirming receipt of the protest that was automatically generated by our computer system at 3:22 p.m. on July 5) that Guam Shipyard sent an e-mail copy of its protest to our Office prior to the time set for receipt of quotations.

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in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

Here, quotations were to be submitted to the issuing office, MSC Far East, which is located in Yokohama, Japan.

The agency notes that the MSC website announced a slightly different revised quotation due date of July 6, 2004, 4:00 p.m. FET [Far East time]. The discrepancy is irrelevant for purposes of this protest.

We turn then to our second question, which is whether we should consider a protest transmitted to our Office by e-mail or fax outside of business hours as filed at the time it enters our computer system (in the case of e-mail) or is received by our fax machine (in the case of a fax) or whether we should consider it as filed as of the opening of business on the following business day. We think that the answer is the latter. While we recognize that our Regulations define the term “days” as “calendar days,” 4 CFR § 21.0(e), the clear intent behind the Regulations, read as a whole, is that documents may be, and are considered, filed only on days when our Office is open for business. In this regard, 4 CFR § 21.0(g) states that “[a] document is filed on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day,” and documents filed after 5:30 p.m. are considered filed on the next business day. See, e.g., Computer One, Inc.—Recon., B-249352.7, Sept. 27, 1993, 93-2 CPD ¶ 185 at 2 n.1. The reference to the 5:30 p.m. deadline has meaning only if used in the context of business days. See Bid Protests at GAO: A Descriptive Guide, 15 (7th ed. 2003) (GAO’s office hours are from 8:30 to 5:30 p.m., eastern time, Monday through Friday). In an analogous situation, we have held that where e-mail notification of an offeror’s exclusion from the competitive range enters an offeror’s computer system after close of business on a weekday or on a weekend or holiday and is not opened before the following business day, receipt of the notice should not be considered to have occurred until that business day. Int’l Resources Group, B-286663, Jan. 31, 2001, 2001 CPD ¶ 35 at 5. Similarly here, we do not consider protest-related submissions received via e-mail or fax outside of business hours as effectively received—and thus filed—until the following business day.<sup>2</sup>

We recognize that § 21.0(e) of our Regulations provides that, for purposes of computing any “period of time” described in the Regulations, “when [GAO], or another Federal agency where a submission is due, is closed for all or part of the last day, the period extends to the next day on which the agency is open.” Unlike the provision in § 21.2(a)(2) establishing a 10-day filing period for other types of protests, however, the filing time established for protests like this one—before bid opening or the time set for receipt of proposals or quotations—does not constitute a “period of time” within the meaning of § 21.0(e). This view is consistent with the purpose behind the filing time rule for protests raising alleged solicitation improprieties—to give the agency notice of the protest, to the greatest extent possible, before bid opening or receipt of proposals, thus giving the agency the opportunity to take action before bids or proposals are prepared and submitted, and, in case of public openings, avoid the release of other bidders’ prices. Applied

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<sup>2</sup> We note that the timeliness questions raised by this protest will arise only in the rare circumstances where the bid opening or due date is to take place in an office located in another time zone and is scheduled right before or after a weekend or holiday.

Controls Co., Inc.—Recon., B-228568.2, Nov. 30, 1987, 87-2 CPD ¶ 528 at 1; ERA Helicopters, Inc., B-218607, Aug. 1, 1985, 85-2 CPD ¶ 114 at 2. Interpreting the language in § 21.0(e) to extend the filing date where the due date for bids, proposals, or quotations falls on a non-business day simply would not be consistent with the purpose of § 21.2(a)(1).

Because Guam Shipyard's protest was not filed with our Office until the opening of business on July 6, after the time set for receipt of quotations had passed in the Far East, the protest is dismissed as untimely.

Anthony H. Gamboa  
General Counsel