

Beware the Automated Email Response: GAO Protest Decision Highlights Need for Vigilance in Remote Work Environment

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Don't rely on an out-of-office notification to keep you in the competition. The U.S. Government Accountability Office's (GAO) recently-published decision in *Ortho-Clinical Diagnostics, Inc.*, B-418946, Oct. 23, 2020, 2020 CPD ¶ 331, illustrates the dangers of relying on an automatic out-of-office notification when communicating with the Government during an ongoing procurement.

Ortho-Clinical Diagnostics (Ortho) protested an award at GAO of a Navy contract for laboratory systems. The Navy opened discussions with all vendors after receiving five quotations but finding none was technically acceptable. On May 7, 2020, the Navy contracting specialist emailed a discussions letter to Ortho's contract manager, who was the point of contact listed in Ortho's quotation for all correspondence regarding the quotation. In addition to identifying issues in Ortho's original proposal, the email informed Ortho that it must submit a revised proposal no later than 2:00 PM on May 15, 2020. The Navy never received a response from Ortho and concluded that Ortho had removed itself from the competition. Ortho did not learn of the emailed discussions letter until receiving its post-award debriefing.

In its protest, Ortho asserted that the Navy failed to conduct meaningful discussions. When the Navy emailed the discussions letter to Ortho's contract manager, the contract manager was on leave for several months. Ortho argued, however, that the contract manager had set an out-of-office notification that should have automatically been sent in response to the Navy's email. The automatic reply provided the contact information for two other Ortho employees who

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were filling in for the contract manager. Ortho argued that the Navy should have received this notification and sent the discussions letter to one of the listed Ortho employees.

A screenshot of the Navy contract specialist's email inbox showed that he did not receive the out-of-office notification. Additionally, Ortho was also unable to show that an out-of-office notification was sent to the Navy in connection with the procurement. Based on that record, GAO found nothing demonstrated that the Navy had received any out-of-office response from Ortho's contract manager, or had any other reason to know that Ortho had not received the discussions letter. GAO concluded that the Navy was not required to confirm that Ortho received the discussions letter, nor was it obligated to contact other Ortho employees. GAO denied Ortho's protest.

As this case illustrates, contractors bear the burden to update bids/proposals with current point of contact information. Here are five best practices to consider to avoid a similar situation, especially during periods in which contractor personnel may be on extended absences due to COVID-19 staffing changes:

1. Know when employees responsible for government contracts are on leave. For employees who have been identified as points of contact in proposals or other procurement- or contract-related communications with the Government, contractors should always know who is on leave, on vacation, or out of the office—even if it is just for one day. Contractors should pay particular attention to any employees who are unable to monitor their emails while they are out of the office. If possible, avoid naming an employee as the point of contact in a proposal if you know in advance that individual will be unavailable during some portion of the competition.
2. Have a backup monitoring system in place. Assign others to monitor an absent employee's email if that person has been identified as a point of contact to the Government. This solution may work best when an employee will be away for only a short time.
3. Update the point of contact with the Government. Make sure the contact information the Government has is current and the employee listed is responsive to email communication. This includes updating any changes to the email address itself, even if emails to the old address are forwarded to the new address. These updates are particularly important for employees who leave the company or will be on leave for an extended period.
4. Be vigilant. Monitor the proposal process and stay up to date on new developments. If you haven't heard from the agency in a while, don't hesitate to reach out for a status update.
5. Archive all government communication. Keep detailed records of all correspondence with the Government relating to a procurement—do not wait until a protest to get organized.

Conclusion: During this time when very few people are physically in the office, it is more important than ever to monitor email for correspondence from the Government. Although it is good practice for employees on leave to set up an automatic out-of-office reply, *Ortho-Clinical Diagnostics* shows that relying solely on this automatic reply can still lead to missed critical communications and lost contracting opportunities.