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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Systems 4, Inc.

**File:** B-270543

**Date:** December 21, 1995

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Francis J. Pelland, Esq., Bell, Boyd & Lloyd, for the protester.

Arthur I. Leaderman, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

General Accounting Office will not disturb contracting officer's decision not to extend time for submission of proposals where protester fails to show the decision was unreasonable and there is no evidence that the decision was a result of a deliberate attempt to exclude the protester from the competition.

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## **DECISION**

Systems 4, Inc. protests the contracting officer's refusal to accept its late proposal submitted in response to solicitation No. NGA-95-RFP-015, issued by the National Gallery of Art for installation of energy management/building automation systems.<sup>1</sup>

We deny the protest.

Systems 4 asserts that at 3:30 p.m. on November 8, 1995, 1 hour before the 4:30 p.m. deadline for submission of proposals, it realized that it needed more time because it was having difficulties preparing its proposal. Specifically, the protester explains, it was having problems with its office computer system/electrical power. While, the protester alleges, it could have submitted an acceptable proposal by 4:30 p.m., Systems 4 wanted to enhance the proposal with additional reference data. Systems 4 states that at approximately 3:45 p.m., its representative called the contracting officer, who stated that he intended to be in his office until 6:30 p.m., and that Systems 4 should "just get [the proposal] down here." The protester states

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<sup>1</sup>Systems 4 also protests "improprieties in the solicitation." Under our Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)), protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to that time. This aspect of the protest is therefore untimely.

that its representative called twice more--shortly after 4:00 p.m. and shortly before 6:30 p.m.--to advise the contracting officer of continuing problems with its computer system and to seek advice on how to deliver the proposal after business hours. Relying on its description of the telephone conversations, the protester states that it was "lulled" into believing that it need not submit its proposal by the 4:30 p.m. deadline.

The contracting officer recalls only the two later calls, both of which came too late for Systems 4 to be able to submit its proposal on time. He denies granting the protester extra time to submit its proposal.

We need not resolve the factual differences in the two accounts of the conversations, since even accepting the protester's version of events, it could not reasonably assume under the circumstances here that the contracting officer would accept its late proposal. Any such assumption would conflict with the express terms of the solicitation, which incorporated the provision at Federal Acquisition Regulation (FAR) § 52.215-10, which provides that the agency may consider late proposals only in certain enumerated instances, none of which applies here. Oral advice contrary to the terms of the solicitation does not bind the government, and an offeror relies upon such advice at its own risk. See Selrico Servs., Inc., B-259709.2, May 1, 1995, 95-1 CPD ¶ 224. Further, acceptance of a late proposal from only one offeror, without an extension of the deadline for all offerors, would violate the requirement for a common cutoff date for all offerors.<sup>2</sup> See Sunset Realty Sales Assocs., B-221390, Mar. 31, 1986, 86-1 CPD ¶ 303, aff'd, B-221390.2, May 27, 1986, 86-1 CPD ¶ 488.

The protester contends that the contracting officer's decision to reject its late proposal was based on the erroneous position that he lacked authority to extend the due date for proposals once the initial deadline had passed. The protester points out that our Office has upheld a contracting officer's discretion to extend the due date after the original deadline where the extension is done to enhance competition. See Fort Biscuit Co., 71 Comp. Gen. 392 (1992), 92-1 CPD ¶ 440; Varicon Int'l, Inc.; MVM, Inc., B-255808; B-255808.2, Apr. 6, 1994, 94-1 CPD ¶ 240. The protester argues that the contracting officer here has discretion to extend the due date, in order to allow consideration of System 4's proposal, and that the refusal to do so is unreasonable.

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<sup>2</sup>There is no suggestion even in the protester's recitation of the telephone conversations that the contracting officer in any way indicated that he had decided to extend the due date for proposals.

While we agree that a contracting officer may extend the due date under appropriate circumstances even after the original deadline is passed, so long as the opportunity to submit a new proposal is extended equally to all offerors, the agency clearly has concluded that it would not be appropriate to do so in this case. Contracting officers are vested with discretion to determine whether and to what extent closing date extensions are necessary. FAR § 15.410. We will not disturb a contracting officer's decision in this regard unless it is shown to be unreasonable or the result of a deliberate attempt to exclude the protester from the competition. See Lanier Worldwide, Inc., B-249338, Nov. 12, 1992, 92-2 CPD ¶ 343; Trilectron Indus., Inc., B-248475, Aug. 27, 1992, 92-2 CPD ¶ 130. Here, other offerors were able to submit timely proposals and there is no evidence of an attempt to exclude Systems 4 from the competition. On the contrary, the record indicates that the agency extended the due date for submission of proposals on several occasions, from August 7 until, ultimately, November 8, at least partially to accommodate the protester's difficulties in preparing a proposal. Thus, we have no basis for concluding that the contracting officer acted improperly.

The protest is denied.

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