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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-218872 **DATE:** May 21, 1985  
**MATTER OF:** White Horse Associates

**DIGEST:**

1. Protest based on alleged ambiguity in solicitation is untimely where not filed before date for submission of offers.
2. Late offer may not be considered for award where there is no indication that wrongful government action was paramount cause of delay in submission. The fact that the protester delayed submitting its offer while awaiting oral advice from contracting agency provides no basis for allowing consideration of late offer.

White Horse Associates protests the exclusion from consideration of its offer under request for proposals (RFP) No. R4-2-85-12, issued by the U.S. Forest Service, Boise, Idaho, for an aquatic and riparian area inventory of the Boise National Forest. We dismiss the protest.

The protester maintains that the technical work plan in the RFP contains contradictory descriptions of the areas to be included in the inventory of riparian vegetation. According to the protester its attempts to clarify this ambiguity caused its proposal to be submitted late.

The RFP was issued on March 29, 1985. The protester states that he first raised the alleged ambiguity in the RFP in a telephone call to the contracting officer on April 22, 1 week before offers were due on April 29. A technical member of the Forest Service staff returned the protester's call on April 23 and referred White Horse to a range scientist for the Boise National Forest. The protester states that he tried unsuccessfully from April 24 to April 26 to reach the range scientist, before finally

speaking with him on the morning of April 29, the day offers were due. The protester then made changes in its offer based on the conversation with the range scientist, but was unable to deliver its offer to the contracting office until 2:28 p.m. on April 29, 28 minutes after the deadline for submission of offers.

To the extent that it is based on the alleged ambiguity in the RFP, the protest is untimely. Where a protest is based on an alleged impropriety apparent on the face of the solicitation, our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), require that the protest be filed with the contracting agency or our Office before the date for receipt of initial proposals. Thus, White Horse's protest should have been filed before April 29, the deadline for submission of offers; its protest to our Office, however, was not filed until May 10.

On the main issue, White Horse states that its offer was submitted late only because of the delay in receiving clarification from the agency regarding the alleged ambiguity in the technical work plan. The protester's reliance on its efforts to receive oral advice from the agency, however, provides no basis for allowing consideration of the late offer. An offer such as the protester's, which is hand-delivered late, may be considered only if wrongful government action is shown to be the paramount cause of the delay. See Visar Co., Inc., 62 Comp. Gen. 148 (1983), 83-1 CPD ¶ 100. In this context, "wrongful government action" means affirmative action on the government's part, such as improper or conflicting delivery instructions, that made it impossible for the offer to be timely delivered to the contracting office. See Key Airlines, B-214122, Feb. 27, 1984, 84-1 CPD ¶ 242. There is no indication in this case of any government impropriety which would fall within that exception.

Moreover, section L of the RFP incorporated a provision of the Federal Acquisition Regulation (FAR), § 52.215-14, 48 C.F.R. § 52.215-14 (1984), which requires that any explanation regarding the meaning or interpretation of the RFP be requested in writing and in sufficient time for a reply to reach all offerors before they submit offers. As a result, the burden was on the protester to make a timely written request for clarification of the alleged ambiguity in the RFP. White Horse did not raise the issue, however, until 3 weeks after issuance of

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the RFP and 1 week before offers were due, and then only by telephone call to the contracting officer. Consequently, it was White Horse's actions, rather than the government's, that resulted in the last-minute submission of the offer.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Deputy Associate  
General Counsel