

DECISION

119554
6/22/82
Pl. 2

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

FILE: B-208847**DATE:** September 24, 1982**MATTER OF:** Mobility Systems and Equipment Company**DIGEST:**

Proposal received after closing date for receipt of proposals is late and not for consideration, notwithstanding possibly erroneous advice from contract specialist, because RFP provided closing date, oral instructions by Government prior to award are not binding, and offeror is responsible for timely delivery of proposal.

Mobility Systems and Equipment Company protests the rejection of its proposal as late by the Department of the Army under request for proposals (RFP) No. DAAD05-82-R-5164 issued by the Aberdeen Proving Ground. Essentially, Mobility contends that its proposal should not be rejected because it complied with the erroneous oral advice of a contract specialist at the procuring agency as to the closing date for receipt of proposals.

It is clear from Mobility's initial submission that this protest is without legal merit. Therefore, we are deciding the matter without receiving a report from the Army. Ward '79 Limited, B-203971, August 4, 1981, 81-2 CPD 93.

Solicitation -5164 was not restricted to small business concerns and, as amended, established August 17, 1982 as the closing date for receipt of proposals. After the RFP was issued, Mobility worked with the Small Business Administration (SBA) in an attempt to convince the Army to set aside this procurement for small business concerns. Mobility states that on August 12 it was informed by the SBA that the Army had rejected the SBA's attempt to have the procurement set aside and that the SBA was requesting that the Army review this decision. Mobility adds that on the following day it was advised that the SBA was also requesting that the Army extend the closing date for receipt of proposals. Mobility, however, was concerned because it did not receive any written notification "confirming" the closing date for the receipt of proposals, so it contacted a contract specialist at the

procuring agency. According to the protester, the specialist advised Mobility that the SBA's request for an extension had been denied and "the date was firm for proposals to be received by August 19, 1982." On August 23, Mobility received a copy of a telegraphic message sent to the Secretary of the Army on August 16, in which the SBA requested that he review the decision not to set aside the procurement and extend the closing date. The message indicated that the RFP established August 17 as the closing date. On August 25, Mobility was notified by the Army that its proposal was delivered to the contracting office at 12:02 p.m. on August 19, which was after the time and date specified in the RFP, and therefore its proposal was not considered for award.

Mobility does not dispute the fact that its proposal was received late. However, Mobility contends that its proposal should be considered because it was pre-occupied with trying to get the procurement set aside for small business and it received inadequate information from the SBA on the status of its attempt to reverse the Army's decision not to set aside the procurement. It further contends that it did not receive any information in writing as to the "correct" closing date and the verbal information it had relied on was incorrect. It notes that its proposal was delivered on the date that it was told was the closing date.

Mobility's correspondence suggests that most of its initial effort was devoted to attempting to have the procurement set aside and that it delayed the submission of its proposal in hopes that this would occur. Five days prior to the due date for receipt of proposals the protester knew that the Army's Directorate of Small and Disadvantaged Business Utilization had rejected the SBA's request to set aside the procurement. At the same time, according to the protester, the SBA advised it that this decision was not "final" and would be appealed to the Secretary of the Army. (A copy of an SBA message provided us by the protester shows that this appeal was made on August 16, the day before proposals were due.)

The protester may have hoped that the Army would reverse its decision at the final hour. The fact remains, however, that the solicitation was not restricted to small business concerns and did set August 17 as the closing date for receipt of proposals. Absent receipt of a notification from the Army's contracting officer that either of these terms had been changed by an amendment to the solicitation, we think it would be logical for an offeror to assume they

remained in effect. Although Mobility now attributes, in part, the late receipt of its proposal to the SBA and the Army's failure to confirm that the solicitation had not changed, we do not believe Mobility can shift in this manner the responsibility for its not having submitted its proposal sooner.

The protester also states that its proposal should be considered because it was received on August 19, which was the due date given it over the telephone by the Army's contract specialist. We note that the contract specialist's advice, as reported by the protester, would be inherently inconsistent, in that the protester was told that the request for an extension of the due date had been denied and that the date was "firm" for August 19. The date set in the solicitation was August 17 and, of course, if no extension had been granted it would remain August 17; it could not become August 19. Either the protester misunderstood the contract specialist or she erred in stating the date as August 19.

Even assuming that Mobility was advised that the closing date was August 19, the RFP expressly provided that the closing date was August 17, not August 19. Oral instructions given before the award of a contract are not binding on the Government. Bend Heating and Sheet Metal, Inc., B-203573, July 17, 1981, 81-2 CPD 47. Furthermore, our Office has consistently held that the offeror has the responsibility to assure the timely arrival of its proposal and must bear the responsibility for its late arrival. Ward '79 Limited, supra.

The protest is summarily denied.

Mary W. Carr
for Comptroller General
of the United States