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T. Sasso Proc I

DECISION



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

FILE: B-187194

DATE: April 5, 1977

MATTER OF: Social Engineering Technology

DIGEST:

1. Protest filed within 10 working days provided in Bid Protest Procedures is timely.
2. Proposal delivered by common carrier to mailroom designated in RFP 2-1/2 hours before time for receipt of proposals, but which was not delivered by contracting agency to procuring activity, only authorized receiving point for timeliness purposes, until next day, was late proposal and could not be considered for award.

By letter dated July 27, 1976, Social Engineering Technology (SET) protested the rejection of its proposal under Department of Housing and Urban Development request for proposals (RFP) H-2407 for research to demonstrate the feasibility of designing a total barrier-free environment for new communities.

The facts of the case are not in dispute. The RFP invited potential offerors to submit proposals-

"* * * to be received not later than 5:00 p.m. local time at the place designated for receipt of offers, June 29, 1976 * * *"

* * * * *

"Mailed Proposals Must Be Mailed To The Following Address:

Department of Housing and Urban Development
Office of Procurement and Contracts
Research and Demonstrations Division (ACR-J)
451 Seventh Street, S.W. - Room B-133
Washington, D.C. 20410

HAND DELIVERIES MUST BE MADE TO:

711 14th Street, N.W. - Room 922
Washington, D.C."

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The RFP further provided:

"3. PROPOSAL SUBMISSION

"Proposals shall be submitted in two separate parts as further described in (a) below and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

"It is very important that the proposal be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the proposal envelope since the Departmental mailroom receiving procedures are; (a) date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate procuring activity, and (b) only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity through the routine mail delivery procedures. If the above is followed, proper consideration can be given to that proposal in accordance with paragraph 10(a)(2) below, as may be appropriate."

Paragraph 10(a)(2) concerning late proposals is quoted below.

SET sent its proposal by commercial carrier. Inadvertently, SET designated the Seventh Street, S.W., address where the proposal was received in the mailroom (B-133) at 2:30 p.m. on June 29, 1976. Dispatched via the next regularly scheduled intra-agency mail, it arrived at the 14th Street address at 10 a.m. on June 30, 1976. By letter dated July 14, 1976, HUD notified SET that the proposal had been rejected as late pursuant to the following portions of the "Late Proposals" provision of the RFP:

"(a) Any proposal received at the Office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

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"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

"(3) It is the only proposal received."

HUD first challenges the timeliness of SET's protest in view of the fact that the protest was not filed here until August 2, 1976. In response to this, SET has indicated that it did not receive HUD's July 14, 1976, letter until July 19, 1976.

The Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1976), provide that protests must be filed not later than 10 working days after the basis of the protest is known or should have been known. Since SET first became aware of the ground for its protest on July 19, 1976, its August 2, 1976, filing is within the 10 working days provided by the Procedures. Therefore, the protest is timely.

It is HUD's position that pursuant to the "Late Proposals" provision of the RFP and the Federal Procurement Regulations (FPR) § 1-3.802-1(a) (1976 ed. amend. 118), SET's proposal was properly rejected as late. "The fact that SET's agent * * * hand-carried the proposal at 2:00 p.m. on June 29th to the HUD mailroom, a destination only authorized for the receipt of mailed proposals, is irrelevant. The controlling fact is that the hand-carried proposal did not arrive at the only location authorized for the receipt of hand-carried proposals until after the deadline." In support of this position, HUD cites Defense Products Company, B-185889, April 7, 1976, 76-1 CPD 233.

Counsel for SET maintains that SET's proposal was not late because:

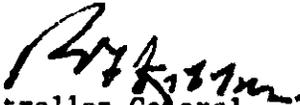
"[i]t was delivered to one of the two offices designated for receipt of proposals and was there received and acknowledged several hours in advance of the deadline. No other bidder was disadvantaged by SET's action, which did not increase the time SET had to respond to the RFP or give SET any advantage whatever over other bidders. * * * SET's proposal was upon its receipt treated like proposals that had been mailed."

HUD takes exception to counsel's assertion that upon receipt SET's proposal was treated like proposals that had been mailed. HUD reports that " * * * not one mailed proposal was received on June 29th." However, HUD adds that " * * * if a mailed proposal had arrived at the HUD mailroom on that day no question would arise concerning whether it complied with the terms of the RFP because the mailed proposal would have been properly delivered to the 'office specified for the receipt of mailed proposals' as required."

Based on our reading of the RFP as a whole, we disagree with the position of both the protester and HUD with regard to the Seventh Street mail room being an authorized point of receipt of proposals for purposes of determining timeliness. Under this interpretation, paragraph 3 of the RFP, "PROPOSAL SUBMISSION," quoted above, would be devoid of meaning. Only if the 14th Street address is construed as the "appropriate procuring activity" does the necessity and meaning of paragraph 3 become evident. Thus, interpreting the RFP in the most reasonable light, we believe that, for purposes of determining the timeliness of proposals, receipt at the Seventh Street mail room was irrelevant except insofar as the "government mishandling" portion of the "Late Proposals" provision of the RFP applied. In this regard, it is clear that this portion of the RFP did not apply here, since the protester's offer was not " * * * sent by mail * * *." See Defense Products Company, supra.

Therefore, in view of the fact that SET's proposal did not arrive at the 14th Street address, the only authorized receiving point for timeliness purposes, until 10 a.m. on June 30, 1976, it was late and could not be considered for award.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States