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GAO/00046

DECISION



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

[Protest of Proposal Rejection for Late Delivery]

10,357

FILE: B-194286 DATE: June 5, 1979
MATTER OF: *addressee*
CompuServe *CNG 01009*

DIGEST:

Where snowstorm closed agency on original closing date and agency extended closing date for only 24 hours, even though debilitating conditions continued beyond that time, agency should not reject proposal as late because there was no urgency to justify the informal rescheduling of the closing date and interested parties have not alleged or shown premature disclosure of other proposals. In the absence of any urgency, agency abused its discretion in extending closing date without informing prospective offerors of that fact.

CompuServe protests the rejection of its proposal under request for proposals (RFP) No. N66032-78-R-0009, issued by the Department of the Navy. CompuServe's hand-delivered proposal has not been evaluated by the Navy because it is considered late. The Navy has retained CompuServe's unopened proposal pending our decision on this protest.

CompuServe maintains that its proposal should be considered because the Navy failed to act reasonably in extending the closing date by only 24 hours without providing prior notice of that fact. In the circumstances, we recommend that the Navy not reject CompuServe's proposal as late.

The material facts are not in dispute. The RFP was issued by the Navy's Automatic Data Processing Selection Office (ADPSO). As amended, the solicitation established Tuesday, February 20, 1979, as the closing date for initial proposals. A heavy snowstorm struck the Washington, D.C. area over the preceding holiday weekend which caused the Government, including ADPSO, to remain closed until Wednesday, February 21, 1979.

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Communications and transportation were disrupted and were not essentially reinstated until Thursday, February 22, 1979. The Federal Government was open for business on Wednesday, February 21, 1979, although liberal annual leave policy (Condition 2) was in effect for Federal workers and in many instances Federal workers who found roads impassable were granted limited administrative leave. ADPSO reports that less than half its staff attended work that day.

The contracting officer extended the closing date by only 24 hours, until 3:30 p.m., Wednesday, February 21, 1979. Any prospective offeror able to reach ADPSO personnel by telephone at home or the office on the 19th, 20th, and 21st of February was advised of this extension. The Navy, however, made no effort to contact the firms (more than 90) which had been furnished copies of the solicitation. CompuServe states that it made unsuccessful attempts to contact ADPSO but only learned of the extension on Thursday, February 22, 1979, at which time it promptly hand-delivered its proposal.

The Navy's position is that it had authority to reschedule the closing date in the manner that it did. It points to the fact that ten offers were received by the extended February 21, 1979, closing time; and it considers the 24 hour extension as fair because the Government was completely closed for business for only 24 hours. Further, the Navy refers to our decision B-158464, March 28, 1966, as authority for a 24 hour extension. CompuServe, on the other hand, maintains that the Navy acted unreasonably in failing to notify it of the extension and for failing to extend the closing date for a sufficiently long period to permit delivery.

We have held that a procuring agency may extend a closing date for 24 hours without notifying offerors of the extension in the event the Government is closed on the originally scheduled closing date and urgency for the supplies or services does not permit the delay incident to amending the solicitation. See Falcon Research & Development Co., B-188321, May 4, 1977, 77-1 CPD 306 and B-158464, supra. However, the facts here

are distinguishable. In the former case it was reasonable for the Army to refuse to extend the closing date because of impassable conditions at the offeror's locale where further delays would have created scheduling difficulties for the using activity. In B-158464, supra, unlike the present case, all bidders met the extended deadline and we rejected the protester's argument that the low bidder be rejected for not meeting the original opening date. We sanctioned the agency's 24 hour postponement of a bid opening even though bidders were not apprised of the extension, but we expressed our preference for notifying all prospective bidders to whom the original invitation was sent, assuming time would permit.

The Navy explains that it elected to extend the closing date for only 24 hours because it believed the only reasonable course of action available was to grant an automatic extension to compensate for the Government's being closed on February 20, 1979. Yet, the Navy admits that on February 19, 1979, it made the decision to re-schedule the closing date for February 22. It only became apparent on February 21, 1979, that so few ADPSO personnel would report to work as to preclude the possibility of informing prospective offerors of the extension. Inasmuch as there was no urgency, the preferable course of action would have been for the Navy to extend the closing date at least until the restoration of normal business conditions and offerors could be notified of the extension.

We believe the Navy abused its discretion by allowing offerors to submit proposals beyond the established closing date of February 20, without making any effort to inform prospective offerors of that fact, in the absence of any urgency. As a result, the protester failed to divine the extended closing date and did not submit its proposal by the next business day. It is essential that the Government conduct its procurements in accordance with clearly defined standards that apply equally to all to ensure fair and impartial treatment. Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD. To permit one or more offerors to deliver proposals after the published closing date without advising prospective offerors of a new cut-off date where time

permitted notification thereof, tends to subvert the competitive system.

Ideally, the Navy should now establish a new closing date and allow all offerors an equal opportunity to submit proposals. However, the Navy has evaluated proposals and has notified offerors found to be outside the competitive range. Under these circumstances, we believe that the fairest course of action without doing violence to the competitive procurement system is to consider CompuServe's proposal at this time. The purpose of establishing cutoff dates in negotiated procurements is to eliminate the danger of premature disclosure of information during the course of the competitive process. Presnell-Kidd Associates, B-191394, April 26, 1978, 78-1 CPD 324. Here we are satisfied that CompuServe submitted its proposal unaware of information about the other proposals. During the informal conference held to discuss the merits of this case all interested parties in attendance agreed that there was no possibility that CompuServe had been apprised of the contents of the proposals submitted by other offerors. No allegation of disclosure has been raised. Further, those proposals excluded from the competitive range are incapable of being made acceptable and the short additional time allowed CompuServe would not have materially affected their competitive position. Those offerors included in the competitive range will not suffer any significant disadvantage inasmuch as the Navy intends to conduct further negotiations with all such offerors.

The protest, therefore, is sustained.


Deputy Comptroller General
of the United States