

DECISION



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

23481

FILE: B-207660.2

DATE: October 28, 1982

MATTER OF: Burroughs Corporation--Reconsideration

DIGEST:

Prior decision denying protest is affirmed because protester has failed to establish decision was based on erroneous interpretation of fact or law.

Burroughs Corporation (Burroughs) requests reconsideration of our decision in the matter of Burroughs Corporation, B-207660, June 23, 1982, 82-1 CPD 622, in which we summarily denied Burroughs' protest against the rejection by the Automatic Data Processing Selection Office (ADPSO), Department of the Navy, of its late technical proposal for group III in negotiated solicitation No. N66032-81-R-0022. For the following reasons, we affirm our prior decision.

In its initial protest to our Office, Burroughs maintained that its proposal should not have been rejected. Burroughs argued that, while it initially overlooked the fact that the proposal was required to be submitted by May 3, it submitted the technical proposal to the contracting agency as soon as it became aware of the requirement on May 4. We summarily denied Burroughs' protest without obtaining an agency report since it was clear from the record that the protest was without legal merit. Pacific Coast Welding & Machine, Inc., B-205874, January 15, 1982, 82-1 CPD 36. The reason cited by Burroughs as its basis for submitting the late proposal was not within the exceptions provided by the "Late Proposals" clause in the solicitation. Our Office has held that an offeror is responsible for the delivery of its proposal to the proper place at the proper time. See Advance Business Service, Inc., B-204940, October 28, 1981, 81-2 CPD 359. Exceptions to the rule may be permitted only in the exact circumstances provided in the "Late Proposals" clause.

Burroughs disagrees with our position that its protest did not require an agency report. Burroughs contends that summary denial is inappropriate when there is a fundamental issue of interpretation against a history of prior dealings. Burroughs believes that our decision incorrectly

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describes its position concerning its reason for submitting the group III technical proposal late. Burroughs argues that it has demonstrated that ADPSO failed to establish May 3 as the clear and unambiguous due date for the group III technical proposal.

We disagree. In our initial decision, we dispensed with the requirement for obtaining an agency report because the materials furnished by Burroughs conclusively established that Burroughs was not entitled to relief. As to whether a solicitation is ambiguous, we have recognized that the mere allegation that something is ambiguous does not make it so. Some factors in a writing may be somewhat confusing without constituting an ambiguity, provided that an application of reason would serve to remove the doubt. Thus, an ambiguity exists only if two or more reasonable interpretations are possible. Crown Transfer Company, B-202572, October 29, 1981, 81-2 CPD 366.

The amendments furnished with the protest clearly established May 3, 1982, as the unambiguous due date for the group III technical proposal. Amendment No. 0011 established 2 p.m., May 3, as the time for the receipt of the technical proposals for group III. The later amendment No. 0014 extended the hour and date for the receipt of the cost proposals for group I, II, III, IV and V from 2 p.m., May 3, to 2 p.m., May 17. Each amendment was issued on Standard Form (SF) 30, "Amendment of Solicitation/Modification of Contract." SF 30 states:

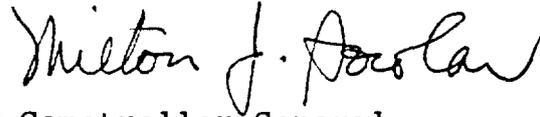
"Except as provided herein, all terms and conditions of * * * [the solicitation] * * *, as heretofore changed, remain unchanged and in full force and effect."

Based on this condition, the only reasonable interpretation of the amendments is that May 3 was the due date for the technical proposal for group III. See Pacific Coast Welding & Machine, Inc., supra.

Accordingly, we conclude that Burroughs has failed to establish that our prior decision was based on an erroneous interpretation of either fact or law and, therefore, it is sustained. Federal Sales Service, Inc.,--Reconsideration, B-198452, June 16, 1980, 80-1 CPD 418.

In addition to the foregoing, Burroughs now protests that on September 28, 1982, ADPSO issued an amendment to the solicitation making substantial changes in the entire procurement and that Burroughs therefore should now be

allowed to submit a proposal on group III. This is being developed as a separate protest and will subsequently be decided under our Bid Protest Procedures.

A handwritten signature in cursive script, reading "Milton J. Asola".

Acting Comptroller General
of the United States