

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

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**FILE:** B-212590**DATE:** December 27, 1983**MATTER OF:** Materials Sciences Corporation**DIGEST:**

1. Where some of a solicitation's instructions as to the proper mailing address for proposals are illegible, the offeror has a duty to clarify the matter and the purchasing agency will not be held responsible for the fact that the offeror misaddressed its proposal.
2. A proposal that is misaddressed, and thus arrives at the proper location late because it was routed through the routine mail processing system at the wrong location, does not fall within any exception to the requirement that late proposals be rejected.

Materials Sciences Corporation (MSC) protests the award of any contract under solicitation No. N00244-83-R-0043 issued by the Department of the Navy. The solicitation sought proposals for the analyses of repairs to the skin of F/A-18 aircraft. MSC contends that the Navy improperly rejected its proposal as late.

We deny the protest.

The solicitation, as amended, established the closing date for receipt of proposals as June 28, 1983, at 3:00 p.m. MSC sent its proposal by the United States Postal Service's express mail delivery on June 24, but addressed the envelope to the contracting officer's technical representative, whose name and address appeared in the text of the solicitation, instead of to the office designated on the solicitation's cover sheet for the receipt of proposals. The Post Office delivered the envelope to the aviation warehouse at the facility in which the technical representative's office was located on June 27 at 10:00 a.m. after attempting unsuccessfully to deliver the envelope on June 25, a Saturday.

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B-212590

Although the envelope apparently identified the contents as a "bid" and noted the solicitation number and time and date of "bid" opening, it was not delivered to the technical representative's office until June 30, two days after closing. The contracting office was promptly notified and the envelope was subsequently sent to that office, which was located several miles from the warehouse. The contracting officer determined that the proposal was late and notified MSC, which protested the determination. Thereafter, the contracting officer reaffirmed his determination and MSC filed a protest with this Office.

MSC generally argues that its proposal was late due to government mishandling and therefore should not have been rejected. At the outset, MSC asserts that it misaddressed its proposal because portions of the Standard Form 33 cover sheet that the firm received as part of the solicitation were illegible and thus instructions as to the proper mailing address were unclear. Specifically, MSC notes that Block 8 was labeled "ADDRESS OFFER TO (if other than block 7)" while block 7 was labeled "ISSUED BY." Block 7 contained an address; block 8 was left blank. MSC contends that the parenthetical in block 8 of the cover sheet it received was illegible and thus it did not know that the proper mailing address was that set forth in block 7. MSC used the technical representative's address, which first appears at page 10 of the solicitation.

To the extent MSC implies that the Navy was negligent in sending the firm a partially legible solicitation and thus was responsible in some way for the firm's misaddressing its proposal, we disagree. At a minimum, the illegibility created a duty on MSC to clarify the proper mailing address since block 8 was blank and, with all the other details about the closing date and time set forth in the cover sheet, it would be reasonable to expect the mailing address there as well. The solicitation was issued on May 12, and MSC had ample time before the June 28 closing date to obtain clarification. Thus, we believe that MSC is primarily responsible for the fact that its proposal was misaddressed.

MSC contends that the Navy mishandled its proposal in that no Navy personnel were available at the warehouse to

B-212590

accept delivery of the proposal on Saturday, June 25. The firm asserts that, had the warehouse mailroom been open on that day, the proposal, even though misaddressed, would have eventually arrived at the proper location before closing time. MSC also questions the 3-day lag between the date the proposal was delivered to the warehouse on June 27 and the date the proposal arrived at the technical representative's office on June 30. Since the envelope containing the proposal clearly identified its contents as an offer, MSC asserts, the 3-day lag was unwarranted. We find no legal merit to this portion of MSC's protest.

Initially, we note that MSC's offer cannot be considered under the solicitation's late proposal clause, which in this case was incorporated into the solicitation by reference. That clause would permit acceptance of MSC's proposal only if it could be shown that the late receipt "was due solely to mishandling by the government after receipt at the government installation. . . ." Defense Acquisition Regulation § 7-2002.4 (1976 ed.). Since MSC's failure to address the proposal correctly resulted in initial delivery to the wrong location and thus contributed in large part to its late arrival, government mishandling was not the sole cause of the proposal's late receipt in this instance.

We have recognized, however, that there are circumstances not within the contemplation of the late proposal clause that justify consideration rather than rejection of a late proposal. For example, where the record clearly shows that government mishandling in the process of receipt is the paramount cause of the tardy delivery, a contracting officer should not reject a proposal based on a strict and literal interpretation of the late proposal clause since doing so would contravene the intent of the late proposal regulations. Control Analysis Corporation, B-209611, April 15, 1983, 83-1 CPD 413.

We are unable to find, based on the record in this case, any evidence that MSC's proposal was mishandled in the process of receipt. While MSC contends that the Navy should have been prepared to accept delivery of the proposal on Saturday, we disagree. Clearly, the requirement that an agency establish proper procedures for the receipt of proposals does not include maintaining weekend mailroom service at the location to which the offeror has misdirected its proposal.

We also find no evidence here that MSC's proposal was mishandled after receipt by the Navy at the warehouse. In this regard, the Navy explains that the warehouse mailroom accepts a large volume of mail and deliveries for all of the Naval Air Rework Facility. Mail is separated, sorted and sent to another warehouse across the street, usually the following day, for delivery to various departments at the facility. The Navy states further that the warehouse does not generally receive bids and proposals and thus, in this instance, warehouse personnel had no reason to know that the envelope, even though its contents were identified, required particular attention. The Navy also notes that, once the envelope was delivered to the technical representative's office, it still had to be sent to the contracting office at the Naval Supply Center, which is located 5 miles away. Under the circumstances, we are not convinced that warehouse mailroom personnel reasonably should have known that the envelope required extraordinary treatment. Nor do we find any other evidence that mishandling caused any unusual delay as the envelope was being routed through the warehouse's mail processing system. In our view, the proposal was late simply because it was misaddressed.

We note that the cases MSC cites in support of its position are inapplicable here. In Canyon Logging Company, B-209429, April 1, 1983, 83-1 CPD 343, we held that an agency could properly accept a late bid, even though it had been misaddressed and sent to the wrong location. Our decision was founded on the fact that agency personnel at the wrong location sent the bid to the mailroom of the proper location before bid opening but placed it in a plain envelope, so that mailroom personnel could not identify the package as a bid. We concluded that the bid under routine processing procedures would have arrived at the proper location on time but did not due to government intervention. Similarly, we held in 50 Comp. Gen. 71 (1970) that a late bid that was incompletely addressed could be accepted where it had been sent by certified mail and normally would have been processed immediately upon receipt by agency personnel but was not. We found that, under the circumstances, the lateness was due solely to mishandling by the government despite the incomplete address. Here, there is no evidence that routine procedures were not followed; rather, the evidence suggests that those routine procedures could not guarantee delivery of MSC's misaddressed proposal to the

B-212590

proper location on time. We conclude therefore that there is no evidence of mishandling in the process of receipt here.

Finally, MSC argues that no other offeror would be prejudiced by the acceptance of its proposal since acceptance would not entitle MSC to award but would merely permit the firm the opportunity to negotiate. The question of prejudice, however, arises only where government mishandling is the paramount cause of the late delivery of the bid or proposal and thus the affect on the competitive system of accepting the bid or proposal must be weighed. See, e.g., Photonics Technology, Inc., B-211234, April 11, 1983, 83-1 CPD 378. That is not the case here and we therefore find no merit to this argument.

The protest is denied.

*for* *Jerry R. Van Cleave*  
Comptroller General  
of the United States