

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

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FILE: B-212101.2**DATE:** August 23, 1983**MATTER OF:** DBA Systems, Inc.--Reconsideration**DIGEST:**

Oral extension of closing date for receipt of proposals is not binding on the Government since contract negotiator did not have the authority to grant such an extension and Government is not bound beyond the actual authority conferred upon its agents.

DBA Systems, Inc. (DBA), requests reconsideration of our decision in DBA Systems, Inc., B-212101, July 6, 1983, 83-2 CPD _____. Our decision summarily denied a protest filed by DBA which alleged that the contract negotiator had granted DBA an oral extension of the closing date and, as a result, DBA argues that its proposal should not have been rejected as a late proposal. We found that even if DBA was correct in its assertion that the contract negotiator did grant DBA an extension of the closing date, the extension was not binding on the Government and the rejection of DBA's proposal was proper. DBA contends that our prior decision failed to address the issue of whether the contract negotiator had implied authority to act on behalf of the contracting officer.

It is well-established law that the Government is not bound beyond the actual authority conferred upon its agents. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); United States v. Crance, 341 F. 2d 161 (8th Cir. 1965). The information submitted by the protester in its original protest indicates that the contract negotiator admits he did not have the authority to extend the closing date for receipt of proposals. Accordingly, the oral extension, if one was given, was not binding on the Government.

Furthermore, although the protester is correct in asserting that Defense Acquisition Regulation (DAR) § 3-505(b) authorizes an oral extension of a closing date, we note that that provision also provides that any extension should be confirmed by written amendment. In addition, instruction 3 to standard form 33A puts offerors on notice that all amendments will be furnished in writing to all offerors.

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Since no confirming amendment was sent, DBA was on notice that the closing date had not actually been changed and relied on the contract negotiator's oral statements to its detriment.

In any event, our review of DBA's initial submission indicates that the contract negotiator denies that any oral extension was granted DBA. Where, as here, the conflicting statements of the protester and the agency constitute the only available evidence of what really transpired in the past, the protester has not carried its burden of affirmatively proving its case. Fry Communications, Inc., B-207605, February 1, 1983, 83-1 CPD 109.

Since the protest is clearly without merit, we have again decided the matter without requesting a report from the contracting agency. Minority Business Enterprises, Inc., B-211836, May 31, 1983, 83-1 CPD 583.

Our prior decision is affirmed.

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