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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Centro Management, Inc.

File: B-287107

Date: March 9, 2001

Trinidad Maldonado and Edward W. Mitura for the protester.
Ltc Richard B. O'Keeffe, Jr., Department of the Army, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected proposal as late where it was received 2 days after amended due date for receipt, even though due date set forth in protester's telefacsimile copy of amendment was typed in small print, allegedly leading protester to misread date; there is no exception permitting consideration of offer received late based on unclear due date.

DECISION

Centro Management, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. DAHA70-01-R-0001, issued by the United States Property and Fiscal Office for Puerto Rico (PFO), Department of the Army, to operate full-time dining facilities for the Puerto Rico National Guard at Fort Allen, Juana Diaz, Puerto Rico. Centro alleges that the agency's amendment revising the date and time for receipt of initial offers invited errors as to the intended closing date.

We deny the protest.

The RFP, issued on November 17, 2000, contemplated the award of a 3-year indefinite-delivery/indefinite-quantity contract. The RFP incorporated by reference the standard late proposal clause at Federal Acquisition Regulation (FAR) § 52.212-1(f)(2)(i), which states, in relevant part, that offers received at the government office designated in the solicitation after the exact time specified for receipt are late and will not be considered. The agency issued six amendments to the RFP. As relevant here, amendments No. 0003 through 0006 were issued exclusively by telefacsimile (fax) transmission. Amendment No. 0006, issued January 9, 2001, provided, among other things, that the "Proposal due date is the

16 January 2001 by this office Close of Business (4:30PM).” This amendment, typed using 6-point type, was received by Centro on January 9. The agency received eight proposals on or before the January 16 due date. Centro’s proposal, sent via Federal Express, was received by PFO on January 18 and was rejected as late.¹

Centro does not dispute that amendment No. 0006 in fact established January 16 as the closing date, but maintains that the rejection of its proposal as late nevertheless was improper because it reasonably viewed its faxed copy of the amendment as clearly indicating a closing date of January 18. The protester notes in this regard that, because the type face of the amendment was so small, “the right side of the number six closed so that it resembled an eight” on its fax. Protester’s Comments at 1. Centro believes the agency improperly used “6 point type when the form clearly had enough room for the standard size,” and improperly sent the amendments by fax, with no hard copy. *Id.* at 3.

Centro’s position is without merit. Centro essentially is arguing that the agency’s actions, rather than its own, were the cause of the late receipt of its proposal. However, it is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal; an agency may consider late proposals in certain enumerated instances, but those circumstances do not include the situation here.² *Systems 4, Inc.* B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 2; *California State Univ., Fullerton*, B-243040.2, May 9, 1991, 91-1 CPD ¶ 452 at 2. While a late offer timely received at the agency may be considered where the agency’s actions prevented it from being timely received at the proper location, *see, e.g., John J. Kirlin, Inc.*, B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419, there simply is no exception to the general rule that permits considering an offer received by the agency after the due date for receipt under the circumstances here.

In any case, we do not agree that the agency was responsible for Centro’s late submission. While the agency does not explain why it used smaller than the common 11- or 12-point type size, our review of the amendment (before it was faxed) shows a clear and easily read due date of “16 January 2001.” We do not think the agency was required to anticipate that faxing would make the intended due date

¹ Another offeror sent its proposal on January 16. This proposal was also received late and rejected.

² Late proposals may be accepted, for example, where there is evidence to establish that the late proposal was the only proposal received, or the proposal was transmitted through an electronic commerce method authorized by the solicitation and received at the point of entry to the government infrastructure not later than 5 p.m., 1 working day prior to the date specified for receipt of offers. FAR § 52.212-1(f)(2)(i).

unclear such that potential offerors could be misled.³ We note in this regard that agencies are not guarantors that solicitation documents will be received by offerors in every instance—the risk of nonreceipt rests with offerors. Chem-Fab Corp., B-277795, Oct. 27, 1997, 97-2 CPD ¶ 120. It follows, we think, that agencies are not guarantors that information sent by fax will be accurately printed by an offeror's fax machine. We conclude that the agency properly rejected Centro's offer as late.⁴

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

³ It is significant, in this regard, that 8 of the 10 offers were received by January 16, indicating that all but 2 firms apparently found the correct due date clear.

⁴ Moreover, we do not agree with Centro that the fax reasonably can be read as clearly indicating a January 18—rather than January 16—proposal due date. As we read the faxed copy of the amendment, the due date is blurred so that the number “6,” contrary to the protester's position, is susceptible of being read as either an “8”—because the top right part of the number is closed—or a “6”—because the top left part of the number does not “bulge out” like the top of an “8.” This being the case, we believe the date was sufficiently unclear that Centro should have sought clarification of the due date. See Materials Sciences Corp., B-212590, Dec. 27, 1983, 84-1 CPD ¶ 27 at 2.