

DECISION



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

[Protest Alleging Various Improprieties in Air Force RFP] 9743

FILE: B-193853

DATE April 10, 1979

MATTER OF: Linguistic Systems, Incorporated

DLG00004

DIGEST:

1. Mailgram protesting alleged improprieties in request for proposals, whose receipt was recorded by General Accounting Office (GAO) after closing date for receipt of proposals, is untimely and ineligible for consideration where mailgram did not evidence a date of transmission at least three days prior to final date for filing a protest. 4 C.F.R. 20.2(b)(3).
2. GAO Bid Protest Control Unit time/date stamp is prima facie evidence of time of receipt of bid protest at GAO, and absent affirmative evidence to the contrary to show actual timely receipt, time/date stamp controls.

Linguistic Systems, Incorporated (Linguistic) protests various alleged improprieties in request for proposals No. F 33657-79-R-0078, issued by the Wright-Patterson Air Force Base, Ohio. The date set for receipt of proposals was December 29, 1978.

The protest was sent to the General Accounting Office (GAO) by mailgram addressed to the Bid Protest Control Unit and was transmitted by the Postal Service to Washington, D.C. on December 29, 1978 at 1:06 a.m. The protest was recorded as received by the GAO Bid Protest Control Unit at 9:35 a.m. on January 4, 1979.

Our Bid Protest Procedures require that a protest based upon alleged improprieties in a request for proposals be "filed" prior to the closing date for receipt of proposals. 4 C.F.R. 20.2(b)(1) (1978). The term "filed" means receipt in GAO. 4 C.F.R. 20.2(b)(3). Thus the protest on its face was not timely.

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However, protester has furnished a statement from the Postmaster in Washington, D.C. advising that in the normal course of business, the mailgram should have been received at the Postal Service's Washington, D.C. mailgram terminal at 1:22 a.m. December 29, 1978; that it should have been forwarded to the Government Mails Section shortly after 4:00 a.m. the same date; and would have been dispatched to GAO no later than 9:00 a.m. that day. The Postmaster further advises that a search of his records indicated neither a record of delayed mail nor a record of returned mail.

By way of background, ordinary mail, including mailgrams, is not time and date stamped as received by the GAO central mailroom. Consequently, the first documentation of the receipt of a protest by GAO is the Bid Protest Control Unit's time/date stamp. Thus, it is impossible to determine whether or not this protest was physically present in GAO prior to the December 29 closing date, and the absence of a Postal Service record to indicate delayed mail is not persuasive of its actual receipt by GAO. For example, although the mailgram should have been received in Washington at 1:22 a.m., there is no record to show that it actually was dispatched to GAO at 9:00 a.m. Moreover, the Postal Service advises that once a mailgram is delivered to its Government Mails Section, it enters the ordinary uncontrolled mailstream for first class mail, so that it cannot be determined whether an individual item of mail actually arrived at its intended destination on a particular date. The time/date stamp must therefore be considered prima facie evidence of the time of receipt at this Office.

For that reason, our Bid Protest Procedures have anticipated that in the normal course of business, an indeterminate amount of time will necessarily transpire between dispatch of a mailgram and receipt by our Bid Protest Control Unit, the address specified in our Bid Protest Procedures, supra. Accordingly, those procedures specify that any protest received by this Office after the prescribed time limits [December 29, 1978 in this instance] shall not be considered unless it was sent by mailgram not later than the third day prior to the final date for filing a protest, with the only acceptable evidence to establish the date of transmission

by mailgram being the automatic date indication appearing on the mailgram. 4 C.F.R. 20.2(b)(3).

Thus, offerors electing to submit a protest by mailgram are clearly placed on notice that if a mailgram is dispatched three days or more prior to the date for filing a protest, consideration of the protest is assured, whereas dispatching of a mailgram less than three days prior to the filing date places the risk of late receipt upon the protester. Our Bid Protest Procedures therefore caution protesters to submit their protests in the manner which will assure earliest receipt, 4 C.F.R. 20.2(b)(3), and we have charged protesters with the responsibility for making sure a protest is filed in a timely manner. Somervell & Associates, Ltd., B-192426, September 18, 1978, 78-2 CPD 208.

In a similar vein, where a bidder or offeror is required to submit a bid or proposal to an office designated by the solicitation within a contracting agency by a specified time, he is responsible for allowing sufficient time to permit a mailed bid or proposal to pass through a contracting agency's central mailroom and reach the specified office by the indicated time. See Lectro-Magnetics, Inc., 56 Comp. Gen. 50 (1976), 76-2 CPD 371. We believe this principle is no less applicable to protests submitted through the mails to this Office.

The time limitations prescribed in GAO Bid Protest Procedures are not regarded as waivable technicalities, as their purpose is to provide expeditious consideration of bid protests without unduly burdening Government procurements. See California Computer Products, Inc.--Reconsideration, B-193437, February 22, 1979, 79-1 CPD 391. As a consequence, we have strictly enforced the time limitations set forth in our procedures and have dismissed protests as untimely without any consideration of their merits when the filing deadlines have not been met. Thus we have dismissed protests that were only one day late, Lemont Shipbuilding and Repair Company, B-180104, January 21, 1974, 74-1 CPD 20; that were late due to the mailing time required from Saigon, South Vietnam, Johnson Associates, Inc., B-180146, January 30, 1974, 74-1 CPD 43; when the protester was unaware of

the time limitations, D. Moody, Inc., B-178591, B-178970, February 4, 1974, 74-1 CPD 48; when a protester sought additional clarification from the contracting agency after the agency's initial denial of the protest, A. C. Manufacturing Company, B-186298, August 9, 1976, 76-2 CPD 137; and even where the protester was inadvertently misled by the contracting agency, Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29. Recently we even declined to consider a protest that was filed one minute late. Somervell & Associates, Ltd., supra. Moreover, we have infrequently invoked the "significant issue" exception to these time limitations (4 C.F.R. 20.2(c)), since that exception relates only to the presence of a "principle of widespread interest," 52 Comp. Gen. 20, supra, which is not found in most cases, see, e.g., 53 Comp. Gen. 412 (1973), and have yet to invoke the "good cause shown" exception also provided in 4 C.F.R. 20.2(c). See, e.g., Somervell & Associates, Ltd., supra; 52 Comp. Gen. 20 (1972).

Since this late mailgram protest was not transmitted three days prior to the date for filing and absent any affirmative evidence to show actual timely receipt of the protest, we consider the protest to be untimely filed and not for consideration on the merits.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel