

DECISION

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

FILE: B-214079

DATE: July 18, 1984

MATTER OF: Space Ordinance Systems,
a Division of TransTechnology
Corporation

DIGEST:

The protester's late telegraphic modification was sent in accordance with the RFP instructions concerning the transmission of telegraphic messages and received at the procuring agency's message center more than 2-1/2 hours prior to closing. The modification should be considered because the lateness was caused by the procuring activity's faulty RFP instructions.

Space Ordinance Systems, a Division of TransTechnology Corporation (SOS), protests the rejection of its telegraphic bid modification as late under request for proposals (RFP) No. DAAA09-83-R-4606, issued by the United States Armament, Munitions and Chemical Command (AMCCOM), Rock Island, Illinois. We sustain the protest.

The RFP was issued for the M206 infrared flare with November 15, 1983, 3:45 p.m., set as the closing date for the receipt of initial proposals. The following instructions were set out in the RFP with respect to telegraphic modifications:

"Prompt handling of telegraphic solicitation modifications/withdrawals depends upon proper identification. It is, therefore, very important that the message be identified as follows: This message is for Claudia Applegate. Call 309-794-3700 upon receipt. This is a modification/withdrawal of [RFP-4606]. Telegraphic messages transmitted other than [by] the TWX system will probably not be received in a timely manner under current conditions."

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On November 15, SOS modified its original proposal. SOS's modification was worded as follows:

"AMCCOM
Rock Island, Ill.

ATTN: Mrs. Claudia Applegate

"This message is for Claudia Applegate. Call Claudia Applegate upon receipt of this message at 794-3700. This is a modification of RFP-4606. [There followed the modified prices.]"

The modification was received at 1:08 p.m., that same day, by the AMCCOM Communications Center, which is located three floors below the room designated for receipt of proposals. But the modification was not received in the designated room until 2 days later. The contracting officer determined that the late modification could not be considered because the late receipt was not due solely to government mishandling after receipt at the government installation. If SOS's modification had been accepted, it would have offered the lowest price. Awards, however, were made on December 29, 1983, to the next two lowest bidders. First article approval was due 5 months after award.

SOS argues that AMCCOM mishandled the modification because the modification was received at the AMCCOM message center 2-1/2 hours before the closing time, but it was not timely delivered.

In response, AMCCOM argues that if the message had been marked in some way to indicate its urgency--for example, by noting the closing date and time of the RFP--the message would have been timely delivered. Finally, AMCCOM advises that even if SOS's modification had been considered, SOS would not have received an award because the contracting officer would have determined the company to be nonresponsive.

In determining whether there has been mishandling at the government installation, our Office will examine the procedures adopted for the receipt and further transmittal of messages to determine whether the means of receipt and transmittal are calculated to effect delivery within a reasonable time. See Stack-On Products Company, Ontarioville Metal Products, B-181862, Oct. 22, 1974, 74-2 C.P.D. ¶ 220. We also recognize that at installations which receive voluminous numbers of telegraphic communications daily, it may be necessary to handle telegrams which are not marked

urgent in a standardized manner and, in such circumstances, immediate transmission of the communications to the proper office may not be feasible; on the other hand, where a telegram is marked "Rush" and the volume of telegraphic communications handled by the government installation is not excessive, the delivery of a telegraphic bid modification via routine mail constitutes mishandling per se on the part of the government. See SRM Manufacturing Company, B-199141, Dec. 16, 1980, 80-2 C.P.D. ¶ 434.

AMCCOM contends that considering the volume of messages handled by the message center every day--which AMCCOM reports averages 600 to 700 messages per day--it cannot reasonably be expected that every message can be treated expeditiously unless the message is marked "urgent." Nevertheless, SOS wired its modification to the proper place in accordance with the instructions provided in the RFP.

In our opinion, SOS's message, which stated "Call Claudia Applegate upon receipt of this message," was sufficient to suggest the urgency of the message without using the specific word "urgent." If the directions in SOS's modification had been carried out (namely, the phoning of Claudia Applegate, the contract specialist for RFP-4606), the modification would have been timely delivered, since, as contract specialist, she was aware of the RFP deadline.

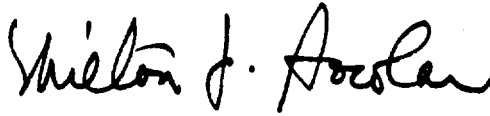
But the phone call was never made by the message center, apparently because of the way SOS organized its message. As shown above, SOS's message contained only Claudia Applegate's name in the heading of the message on the "attention line." The line conveying the urgency of the message--"Call Claudia Applegate upon receipt of this message at 794-3700. This is a modification of RFP-4606"--appeared in the body of the message following--after double spacing--the attention line of the message. Given the volume of messages, the communications center personnel apparently scanned only the heading of SOS's message (from the top line of the TWX down to, and including, the attention line) and not the body of that message.

While the RFP instructed offerors to "identify" their modifications as shown above, offerors were not specifically told that the full "urgency" message should be in the heading (meaning the "attention" line or above) of the message as, we think, they should have been, given the message center's apparent practice of scanning only the headings of messages.

Given these circumstances, it is our view that AMCCOM was ultimately responsible for the the late receipt of SOS's modification. Therefore, we recommend that in the future, AMCCOM should specifically advise offerors to place the urgency of the message (phone upon receipt) in the heading of the message.

The appropriate corrective action in this case is to evaluate SOS's modification--thereby making SOS the low offeror--and to evaluate the present responsibility of SOS notwithstanding that the contracting officer states that at the time of award, SOS would have been determined to be nonresponsible. A responsibility determination should be based on the most current information available to the contracting officer at the time the determination is made. See Beacon Winch Company--Request for Reconsideration, B-204787.2, Aug. 15, 1983, 83-2 C.P.D. ¶ 205. In the event that SOS is determined to be responsible, we recommend that AMCCOM consider the feasibility of terminating the current contracts for the convenience of the government and awarding to SOS for the remaining requirement.

The protest is sustained.

for 
Comptroller General
of the United States