

DECISION



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

FILE: B-222583 **DATE:** June 3, 1986
MATTER OF: Management Concepts, Inc.

DIGEST:

1. Oral extension of the closing date for receipt of proposals is not binding on the government and protester therefore cannot rely on an oral extension.
2. In the absence of showing of prejudice, agency's failure to promptly notify protester that its proposal was late and would not be considered is a procedural deficiency that does not affect validity of any award.
3. Where agency mistakenly opened and initially considered late offer, agency's actions confer no additional rights on protester and agency's subsequent decision to reject the late offer was proper.

Management Concepts, Inc. (MCI), protests any award under solicitation No. IRS86-14001 issued by the Internal Revenue Service (IRS), MCI contends that its proposal was improperly rejected as being late.

We dismiss the protest without obtaining an agency report because it is clear on its face that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1985).

According to MCI, the original due date for receipt of proposals was January 23, 1986, but this date was extended to February 13, 1986. It was not until February 10, 1986, that IRS sent MCI a manual and certain regulations which, according to MCI, were necessary to prepare a responsive proposal. On the same day, MCI apparently requested that the contracts representative extend the closing date. The protester states that the contracts representative orally advised MCI's project officer that he was extending the closing date to 5 p.m., February 18, 1986. MCI states that it submitted its proposal at 4:55 p.m. on February 18, 1985.

According to MCI, on May 1, 1986, MCI was advised that its proposal was technically acceptable, but clarifications were needed for certain items. MCI also was advised that best and final offers were due at the close of business on May 9, 1986. On May 2, 1986, MCI states that it was told that its proposal would be rejected as late.

MCI argues that its proposal was timely and should be considered for award. MCI contends that the contracting officer orally extended the closing date and time to 5 p.m. on February 18, and MCI's offer was submitted prior to the revised closing date and time. In support of this contention, MCI states that it was over 2 months before MCI was notified that its proposal was late and by then its proposal had been opened and evaluated. MCI contends that this is in violation of section 15.412(d) of the Federal Acquisition Regulation (FAR), which requires that the agency promptly notify the offeror that its proposal was received late and will not be considered and FAR § 15.412(f), which states that proposals that are not considered shall be held unopened until after award. MCI argues that, under these circumstances, it timely submitted its offer and the proposal was properly evaluated and considered by the IRS. We conclude that MCI's offer properly was rejected.

Although FAR § 15.410 (Federal Acquisition Circular 84-12, Jan. 20, 1986) authorizes the oral extension of the date for receipt of proposals, the provision also requires that such an extension be confirmed in writing. Since no confirming amendment was sent, MCI was on notice that the date for receipt of proposals had not actually been changed and relied on the contracts representative's oral statement to its detriment. See DBA Systems, Inc.--Reconsideration, B-212101.2, Aug. 23, 1983, 83-2 C.P.D. ¶ 244.

Regarding IRS's failure to promptly notify MCI that its proposal was unacceptable, we have held that, in the absence of prejudice, failure to give prompt notice of rejection of a late proposal is a procedural deficiency that does not affect the validity of any award. Real Fresh, Inc., B-204604, Dec. 31, 1981, 81-2 C.P.D. ¶ 522; Systems, Science and Software, B-182693, June 6, 1975, 75-1 C.P.D. ¶ 343. No prejudice has been alleged or shown here.

Furthermore, concerning IRS's opening of MCI's proposal, in our view the erroneous opening of a proposal does not justify disregarding the requirement that award be made to an acceptable offeror. See Gross Engineering Co.--Reconsideration, B-193953, Apr. 24, 1979, 79-1 C.P.D. ¶ 285.

Therefore, the fact that the late proposal was mistakenly opened confers no additional rights on MCI. The IRS's erroneous opening and evaluation of MCI's late offer does not permit acceptance of the offer where it is initially submitted late. Payne-Maxie Consultants, B-180827, June 6, 1974, 74-1 C.P.D. ¶ 309.

We dismiss the protest.



Robert M. Strong
Deputy Associate
General Counsel