



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Astro Systems, Inc.

**File:** B-244102

**Date:** August 8, 1991

Lawrence M. Farrell, Esq., and Margaret M. Antinori, Esq., McKenna & Cuneo, for the protester.  
Gregory H. Petkoff, Esq., and Walter C. Roberts, Jr., Esq., Department of the Air Force, for the agency.  
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is denied where protester does not show that late receipt of proposal on overseas procurement was due solely to mishandling by the government after receipt at the government installation.

### DECISION

Astro Systems, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. F61521-91-R-5003, issued by the Department of the Air Force for the operations and maintenance of communications systems in Spain, Italy, and Mt. Pateras, Greece.

We deny the protest.

The RFP was issued on February 20, 1991, and required proposals to be submitted to the Air Force Contracting Center in Kaiserslautern, Germany on April 5, 1991. The RFP provided that late proposals would be processed in accordance with the provision of Federal Acquisition Regulation (FAR) § 52.215-36, entitled "Late Submissions, Modifications, and Withdrawals of Proposals (Overseas)."<sup>1/</sup>

<sup>1/</sup> FAR § 52.215-36 provides, with respect to solicitations under which offers are to be submitted to a contracting office outside the United States or Canada, that any proposal received after the exact time specified for receipt will not be considered for award unless it is received before the award is made and there is evidence that government mishandling after receipt at the installation is the sole reason for its lateness or it is the only proposal received.

On March 28, 1991, amendment No. 0001, incorporating changes to the RFP, was sent by first-class mail to all potential offerors. On April 2, in response to Astro's concerns about the closing date for receipt of proposals, the contracting officer faxed to Astro portions of amendment Nos. 0001 and 0002, with a final closing date for receipt of proposals of April 15. Neither of the documents faxed to Astro on April 2 changed the late submission rule provided for in the original RFP.

On April 10, Astro mailed its proposal to the contracting office by certified mail. On April 11, Astro received the remainder of amendment No. 0001 which appeared to reflect on one page a change in the provision governing late submissions, from FAR § 52.215-36 to FAR § 52.215-102/. In other places in the RFP, references to FAR § 52.215-36 remained. On April 12, Astro telecopied a letter to the contracting officer notifying her that it had received the complete amendment No. 0001 on April 11, and that it believed it had complied with FAR § 52.215-10 by sending its proposal via certified mail on April 10.<sup>3/</sup> Astro's proposal was received by the Air Force 9 days after the closing date for receipt for proposals.

The Air Force declined to consider Astro's proposal because the contracting officer determined that the proposal was late pursuant to FAR § 52.215-36 since the proposal was received after the closing date and there was no mishandling by the government after receipt of the proposal at the contracting office.

On May 16, Astro filed this protest with our Office. The protester argues that the contracting officer's clerical

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2/ FAR § 52.215-10 provides, for solicitations issued in the United States and Canada for submission of offers to a contracting office in the United States or Canada, that any proposal received at the Office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers.

3/ When Astro had earlier mailed its proposal on April 10, Astro knew or should have known that FAR § 52.215-36 applied and would govern its proposal if it were received after the due date since it was the only applicable clause cited in the RFP at that time. Any alleged confusion on Astro's part came after it had already sent its proposal by certified mail 5 days prior to the closing date.

mistake on amendment No. 0001 relating to the applicable late submission rule, coupled with her failure to respond to Astro's telecopy of April 12, constituted a form of mishandling which resulted directly in the late receipt of Astro's proposal because Astro could have hand-carried a second proposal had it known that FAR § 52.215-10 was inapplicable.

The only exception permitted for considering late proposals on overseas procurements, whether sent first class, registered, or certified mail, is where it is determined by the government that the late receipt of the proposal was due solely to mishandling by the government "after receipt at the [g]overnment installation" or was "the only proposal received," FAR §§ 52.215-36(a)(1) and (2). Thus, the proposal must be delivered to the contracting agency installation before the mishandling contemplated by the clause can occur. See generally, Winston Corp., B-243394, Apr. 8, 1991, 91-1 CPD ¶ 360. Astro's proposal did not arrive at the contracting agency until 9 days after the closing date for receipt for proposals.

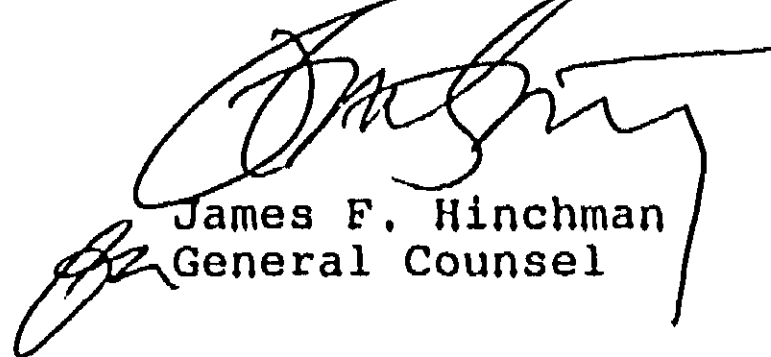
Astro admits that there was no government mishandling of its proposal but still argues that the alleged mishandling of its April 11 telecopy to the contracting officer constituted mishandling in the process of receipt of its mailed proposal. We have recognized, in limited circumstances, that government mishandling in the process of the receipt of a bid or modification may be the paramount cause for nonreceipt of a bid or modification at the installation. For example, we held that where an agency permitted a telex machine to run out of paper, which prevented transcription of a telegraphic bid prior to bid opening, constituted mishandling by the government. Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD ¶ 331. Similarly, in The Standard Prods. Co., B-215832, Jan. 23, 1985, 85-1 CPD ¶ 86, we held that the agency did not exercise due care in ensuring use of the telex machine was not suspended for failure to pay Western Union the service fee.

Here, Astro's proposal was mailed and simply did not arrive at the contracting agency by the closing date. Consequently, Astro's situation does not fall within the above stated

exceptions, since there is no evidence in the record to establish that government mishandling in the process of receipt was the paramount cause for late receipt of Astro's proposal by the Air Force.4/

Therefore, Astro's proposal submitted after the closing date for receipt of proposals was properly rejected.

The protest is denied.



James F. Hinchman  
General Counsel

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4/ We also find that Astro was not reasonably misled by the one reference to FAR § 52.215-10 in amendment No. 0001 since it knew or should have known that this was an overseas procurement requiring the use of FAR § 52.215-36 and since the latter clause was referenced in other parts of the RFP.