



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** The Microscope Company, Inc.

**File:** B-257015

**Date:** August 8, 1994

Janis V. Nazarian for the protester.  
Anita M. LeBlanc, Esq., and Esther Thomas, Esq., Department of the Navy, for the agency.  
Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

An offeror is responsible for conveying its offer, including modifications, to the designated office on time; where an offeror's revised proposal was allegedly timely transmitted by telefacsimile, but the contracting agency denies receipt and there is no proof of receipt other than the protester's evidence that a facsimile transmission was sent to the agency, the protester must bear the risk of nonreceipt.

### DECISION

The Microscope Company, Inc. protests the rejection of its proposal under request for proposals (RFP) No. N00228-94-R-2034, issued by the Fleet and Industrial Supply Center, Department of the Navy, for a high resolution camera.

We deny the protest in part and dismiss it in part.

Four offerors, including Microscope, responded to the RFP by the March 7 closing date for the receipt of proposals. Microscope's initial proposal was determined to be technically unacceptable while the other offerors' proposals were found to be acceptable. On March 22, the Navy apprised Microscope of the technical deficiencies in its proposal, and requested revised proposals from Microscope and the other offerors. The closing date for submission of proposal revisions was March 29, and the Navy authorized the use of telefacsimile to transmit revisions. Offerors were cautioned, however, that late revisions would be processed

in accordance with the RFP clause governing late proposals and late modifications.

The Navy did not receive any responses from Microscope or the other offerors by March 29. After that date, the Navy learned from Microscope that it had allegedly transmitted a revised proposal by facsimile to the agency on March 29. Because the Navy was unable to locate Microscope's telefacsimiled revised proposal, the agency considered only Microscope's initial proposal, which was rejected as technically unacceptable. This protest followed.

Microscope asserts that the Navy timely received its telefacsimiled revised proposal; specifically, the protester argues that the facsimile records of its long distance telephone provider establish that a timely facsimile transmission was sent to the designated agency office. The Navy responds that it did not receive Microscope's revised proposal by facsimile transmission or otherwise by the March 29 closing date. In support of its contention, the Navy provided the sworn statement of the contract specialist responsible for receiving facsimile transmissions, who states that incoming facsimile transmissions were regularly checked on the morning of March 29 but that no facsimile transmission was received from Microscope.

Even accepting Microscope's facsimile records as evidence that it actually timely sent its revised proposal, this alone does not establish that the Navy timely received Microscope's revised proposal, since the Navy denies receipt and there is no other evidence that the Navy actually received the protester's proposal revisions. See Southern CAD/CAM, 71 Comp. Gen. 78 (1991), 91-2 CPD ¶ 453. It is an offeror's responsibility to ensure the timely receipt of its offer and proposal modifications by the designated government office. See Federal Acquisition Regulation (FAR) § 15.412(b); Southern CAD/CAM, *supra*. In this regard, offerors that transmit proposal documents by facsimile assume the risk of nonreceipt. *Id.*; S.W. Electronics & Mfg. Corp., B-249308, Nov. 3, 1992, 92-2 CPD ¶ 320.

Given the absence of any evidence establishing the Navy's receipt of Microscope's telefacsimiled proposal revisions, we find that the Navy properly considered only Microscope's

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<sup>1</sup>This clause provided generally that a late proposal modification would not be considered except under limited circumstances, such as where the late receipt was due solely to government mishandling after receipt at the government installation or where the late modification of an otherwise successful offer makes its terms more favorable to the government.

initial proposal, which the Navy properly rejected as unacceptable.

Microscope also objects to the Navy's authorization of the use of facsimile transmissions as a means of conducting negotiations. In addition, Microscope complains that the Navy provided insufficient time to provide a revised proposal by any means other than by facsimile transmission. Our Bid Protest Regulations provide that where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for the receipt of proposals following the incorporation. See 4 C.F.R. § 21.2(a)(1) (1994). Microscope's protest of these matters after the closing date for receipt of revised proposals is untimely.

The protest is denied in part and dismissed in part.

/s/ Ronald Berger  
for Robert P. Murphy  
Acting General Counsel

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<sup>2</sup>Microscope does not assert that its initial proposal was misevaluated in any way.