

DOCUMENT RESUME

02363 - [A1432418]

[Reconsideration of Timeliness of Proposal]. B-187194. May 13, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Social Engineering Technology; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Department of Housing and Urban Development.

Congressional Relevance: Rep. Anthony C. Beilenson.

Authority: 49 Comp. Gen. 191. 49 Comp. Gen. 194. B-161306 (1967). B-157770 (1965).

The protester requested reconsideration of the decision in which GAO determined that the protester's proposal was late and could not be considered for award. Review confirms that the proposal was not received at the appropriate procuring activity until after the deadline. GAO is not bound to follow the legal arguments advanced by parties, and can make determination based upon independent legal analysis of the situation. Prior decision was affirmed. (Author/SC)

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DECISION



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

FILE: B-187194

DATE: May 13, 1977

MATTER OF: Social Engineering Technology--Reconsideration

DIGEST:

1. Protester's contention that hand-carried proposal was timely received at mailroom before deadline set out in RFP and should have been considered is denied where RFP clearly indicates mailroom is mere conduit for transmission of proposals to appropriate procuring activity, which is point for determining timeliness, and proposal was not received at appropriate procuring activity until after deadline.
2. GAO in determining whether offer properly was rejected is not bound to follow legal arguments advanced by parties and can make determination based upon independent legal analysis of situation.
3. If only purpose of "PROPOSAL SUBMISSION" clause is to assure that mailed proposals were received by mailroom before deadline and that proposals are dispatched by mailroom with speed to procurement activity, it would have been unnecessary for clause to refer to "Late Proposals" clause, since if offer received at mailroom before designated time is timely, question of late receipt for subsequent mishandling by Government would never enter into situation.

By letter dated April 15, 1977, Social Engineering Technology (SET) requested reconsideration of our decision in Social Engineering Technology, B-187194, April 5, 1977, in which we determined that the protester's proposal was late and could not be considered for award under Department of Housing and Urban Development (HUD) request for proposals (RFP) H-2407.

The facts involved in SET's protest were set forth completely in the April 5 decision and, therefore, will not be repeated here.

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While it is SET's position on reconsideration that the RFP should not be construed as requiring that the offer be received at both the Seventh Street mail facility and the Fourteenth Street procurement facility before the 5 p.m. deadline and that such an interpretation means that offerors would have to take into account the time for normal transmission through HUD's internal mail, such a requirement is not novel and has been followed by our Office repeatedly. In that connection, see B-161306, April 19, 1967, where it was stated:

"* * * it is not enough that the bid should have been received from the post office at the central mailroom before the bid opening time. The sender has to allow sufficient time for it to reach the bid room by the bid opening time. B-157770, December 13, 1965. * * *"

See also 49 Comp. Gen. 191, 194 (1969).

Moreover, when paragraph 3 (PROPOSAL SUBMISSION) of the RFP is read in conjunction with paragraph 10(a)(2) (Late Proposals), both of which are quoted in the April 5 decision, it is clear that the mailroom is a mere conduit for the transmission of proposals to the appropriate procuring activity, which is the point for determining timeliness.

Although it is stated that our position is not consistent with the position of HUD and SET (referenced in the prior decision), our Office in determining whether an offer properly was rejected is not bound to follow the legal arguments advanced by the parties which may ignore or overlook important factors and we can make a determination based upon an independent legal analysis of the situation.

Also, SET states that paragraph 3 would not be devoid of meaning if the mailroom were accepted as the place of receipt, since the date and time stamping requirements are essential to assure that the mailed proposals were received before the deadline and that the proposals are dispatched by the mailroom with speed to the procuring activity. However, if that was the only purpose of paragraph 3, then it would not have been necessary for that paragraph to reference paragraph 10(a)(2) which deals with late receipt due to mishandling by the Government after receipt at the Government installation. If an offer received at the mailroom before the designated time is timely regardless of what happens after that, then the question of late receipt for

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subsequent Government mishandling would never enter into the situation. Since paragraph 10(a)(2) provides for that consideration, we believe that furthers the construction that lateness is determined from the point of ultimate receipt rather than the mailroom. Since SET's proposal hand-carried to the mailroom did not arrive at the appropriate procuring activity until after the deadline, it was late and was not for consideration.

Accordingly, the decision of April 5, 1977, is affirmed.

R. Z. Kitten
Acting Comptroller General
of the United States

Richard Kleman
Proc. II



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20540

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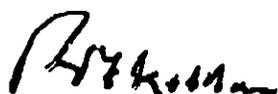
The Honorable Anthony C. Beilenson
House of Representatives

Dear Mr. Beilenson:

Reference is made to your interest in the protest of Social Engineering Technology under request for proposals H-2407 issued by the Department of Housing and Urban Development.

By decision of April 5, 1977, we denied the protest. A copy of our decision was forwarded to you. At the request of counsel for Social Engineering Technology, we reconsidered the matter. Enclosed is a copy of our decision of today affirming our decision of April 5.

Sincerely yours,


Acting Comptroller General
of the United States

Enclosure