



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Koba Associates, Inc.

File: B-265854

Date: November 8, 1995

Ernest P. Francis, Esq., for the protester.

Terrence J. Tychan, Department of Health & Human Services, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected a hand-carried proposal that was delivered to the depository office 3 minutes after the time specified for receipt of initial proposals where the protester's actions were the paramount cause of the late delivery.

DECISION

Koba Associates, Inc. protests the Center for Substance Abuse Treatment's (CSAT) refusal to consider its proposal submitted in response to request for proposals (RFP) No. CSAT-95-0024, because the proposal was received at the contracts office 3 minutes after the time specified for submission of initial proposals.

We deny the protest.

Issued on June 30, 1995, the RFP requested proposals for furnishing technical assistance and training services in support of treatment centers operated under CSAT's Criminal Justice Treatment Networks. The RFP stated that initial proposals must be received in CSAT's contracts office no later than 2 p.m. on August 21, and that hand-carried proposals should be delivered to the following address:

"Jacquelyn C. Carey, Contracting Officer
Center for Substance Abuse Treatment
Contracts Management Branch
5515 Security Lane, Rockwall II
Suite 6A-26
Rockville, Maryland 20857"

The RFP included the standard late proposals clause, Federal Acquisition Regulation § 52.215-10, which states that, generally, any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered. The clause also states that the only acceptable evidence to establish

the time of receipt at the government installation is the time/date stamp of that installation or other documentary evidence of receipt maintained by the installation.

Koba contends that the late submission "resulted solely from the confusing and misleading signs" on the floor where the office for hand-delivery is located. Koba states that there is no sign for suite 6A-26 or for the Contracts Management Branch on that floor. Koba asserts that its employee arrived at the building "well before 2 p.m. with plenty of time to meet the deadline," but was delayed because he was unable to find suite 6A-26. Koba asserts that when its employee attempted to deliver the proposal, the contract specialist in the depository office time/date stamped the proposal as having been received at 2:03 p.m., determined that the proposal was late, and refused to accept it.¹

Koba explains that upon exiting the elevator, the delivery person saw signs that pointed to the left for rooms 630-670 or to the right for rooms 615-623. Koba's delivery man turned the wrong way and went to room 640 where he states that he had previously delivered proposals to CSAT. An individual in room 640 directed the delivery person to room 621 at the opposite end of the corridor; room 6A-26 is located within room 621. While en route, the delivery person encountered a CSAT employee (a contract specialist) who accompanied him to room 621. The CSAT employee unlocked the door to room 621 and led the delivery man to a secretary. According to Koba, the contract specialist instructed the secretary to accept the offer but, at that point in time, the contracting officer appeared and refused to accept the offer because it was late.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires that a proposal be rejected. See Robert R. Nathan Assocs., Inc., B-230707, June 28, 1988, 88-1 CPD ¶ 615. By choosing a method of delivery other than those methods specified in the late proposal clause (registered mail, certified mail or telegram where authorized), an offeror assumes a high degree of risk that its proposal will be rejected if untimely delivered. Id. A late proposal should not be considered for award if the offeror significantly contributed to its late receipt by not acting reasonably in fulfilling its responsibility of delivering a hand-carried offer to the proper place at the proper time, even where lateness may have been caused, in part, by erroneous government action or advice. See Seer Publishing, Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181.

While Koba asserts that its employee arrived at the building "with plenty of time" or "ample time" to make a timely delivery, Koba never states when its employee actually arrived at the building. Moreover, while Koba generally states that the corridor signs were misleading, there is nothing in the record showing, and Koba

¹Five other hand-carried proposals were submitted in a timely manner.

has not shown, that its messenger was misdirected by any particular sign or by a government employee. In fact, Koba submitted a picture showing that the door to the room containing suite 6A-26 bore a sign that read "Contracts Branch," and, according to Koba's own statement, the only government employee with whom the messenger spoke, a contract specialist, was very helpful and led Koba's employee directly to the contracts office. Thus, the record contains no evidence of any government action or advice that contributed to Koba's proposal being submitted late. Rather, it appears that the only reason that Koba's proposal was late was that Koba did not act reasonably by having its messenger arrive at the building in which CSAT is located early enough to locate the depository office and submit the proposal on time.² Based on this record, we conclude that Koba, not the contracting agency, was the paramount cause of the late submission. The offer therefore properly was not considered for contract award. See Seer Publishing, Inc., supra.

The protest is denied.

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²Although not necessary to resolve the protest, because Koba did not tell us when its employee arrived at the CSAT building, a General Accounting Office attorney visited the CSAT site (without notice to the agency) in order to determine approximately how long it should have taken the messenger to find the depository room given the hallway signs that were posted, to calculate the approximate time that the Koba messenger arrived at the CSAT building, and to better understand the layout of the offices and relevant signs. Following the exact route described by Koba as being taken by its messenger, our attorney found that the entire search, from the building's front door to the contracts office, took only 5 minutes and, therefore, confirmed that Koba's delivery person could not have arrived at the building more than a few minutes before the closing time.