



**Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**Matter of:** The Staubach Company

**File:** B-276486

**Date:** May 19, 1997

---

David M. Nadler, Esq., and C. Ernest Edgar IV, Esq., Dickstein, Shapiro, Morin & Oshinsky, LLP, for the protester.

Emily C. Hewitt, Esq., and Barry D. Segal, Esq., General Services Administration, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Agency properly rejected a hand-carried offer as late where the price proposal was timely submitted, but the required technical and key personnel portions of the proposal were not submitted before the closing time set for receipt of offers.
2. Where solicitation required offerors to submit price, technical, and key personnel proposals, each in separate volumes, and the technical and key personnel areas represented a significant portion of the technical evaluation, record reasonably supports agency's determination that allowing protester to submit technical and key personnel proposals after the date set for receipt of proposals would be tantamount to the improper acceptance of a late proposal.

---

## DECISION

The Staubach Company protests the rejection of its proposals under request for proposals (RFP) No. GS-02P-96-CVD-0006, issued by the General Services Administration (GSA) for real estate services. The GSA rejected Staubach's proposals because, although the protester timely submitted price proposals, the required technical and key personnel proposals were not submitted by the time established in the RFP for receipt of proposals.

We deny the protest.

The successful contractor is to assist GSA in obtaining leasehold interests and provide a variety of other real estate-related services nationwide. For evaluation and administration purposes, the RFP divided the United States and territories into four geographic regions or service zones, and required offerors to submit separate proposals for each zone. Each proposal was to consist of three physically separate volumes--volume I (price proposal); volume II (technical proposal); and volume III

(key personnel resumes and other information). The RFP contained detailed instructions on the type of information to be included in each proposal section, and required that volume I be packaged individually, while volumes II and III could be packaged together. Proposals were to be submitted to a designated GSA office in New York no later than 4:30 p.m., February 21, 1997.

Mr. Peter J. Downes, president of a consulting firm retained by Staubach to assist it with preparing, packaging, and delivering its proposals, submitted an affidavit to our Office describing the events surrounding the delivery of Staubach's proposals to the GSA. Mr. Downes states that for each of the four zones covered by the RFP, Staubach's proposal consisted of an envelope which contained a cover letter and volume I (the price proposal for that zone), and a corresponding box which contained volumes II and III. In total, there were four envelopes and four boxes--one envelope and one box for each of the four zones covered by the RFP.

Mr. Downes explains that at approximately 2:35 p.m. on February 20, 1997, he telephoned DHL Same Day Air, a commercial courier with which he had made arrangements earlier that day to pick up and deliver Staubach's proposals to GSA in New York, to check on the status of the delivery. According to Mr. Downes, DHL confirmed that the eight pieces had been placed on a US Air Shuttle flight to New York's La Guardia Airport and would be delivered to GSA by 4:30 p.m. that day.

At 4:15 p.m. on February 20, Mr. Downes telephoned GSA's bid room to confirm delivery of Staubach's proposals. Mr. Downes states that a GSA employee in the bid room confirmed that she had received a DHL delivery from Staubach. Mr. Downes states that he expressed concern about this delivery, and asked for assurance that she had received "four envelopes and four boxes," to which she allegedly responded, "[d]on't worry Mr. Downes. Everything has been received."<sup>1</sup>

---

<sup>1</sup>Although there is no dispute that this telephone conversation took place, the parties' recollection of its content differs. For instance, the GSA bid room employee who responded to Mr. Downes's telephone inquiry disputes that anyone specifically inquired whether four boxes and four envelopes had been delivered. In addition, prior to calling the bid room, Mr. Downes states that he telephoned the contracting officer who, after learning that Staubach's proposals were packaged in four separate envelopes and four boxes, allegedly said that he was "curious" and that "maybe he would go to the bid room and check." The contracting officer does not recall ever telling Mr. Downes or any other offeror that called that day that he was "curious" about their submission or that he would check the bid room to verify that a proposal had been received. As is evident from our discussion below, this apparent disagreement concerning the details of these conversations is immaterial to our decision.

The contracting officer explains that on Monday, February 24, he discovered that Staubach's submission consisted of only four separate envelopes, each containing a volume I, all of which were inside a white plastic bag labeled "US Air Shuttle Pak." On February 27, after searching the bid room and other areas of GSA's offices, the contracting officer informed Staubach that although GSA had timely received volume I of the firm's proposals, GSA had not received any of the corresponding volumes II or III of the proposals for any of the four zones. Upon further inquiry, the protester located the four missing boxes at La Guardia Airport's Lost and Found. The four boxes were then delivered to the GSA bid room on Friday, February 28.

By letter dated March 6, the contracting officer informed the protester that GSA could not properly consider volumes II or III of Staubach's proposal because they were received after the time established in the RFP for receipt of initial offers and rejected Staubach's proposals as "technically unacceptable." This protest to our Office followed.

The protester contends that GSA should consider its proposals because the failure to timely deliver the four boxes was the result of government mishandling. The protester argues that Mr. Downes was misled by the GSA bid room employee into believing that GSA had received Staubach's proposals when, in fact, the four boxes containing volumes II and III of the proposals had not been received. The protester maintains that Mr. Downes was entitled to rely on the bid room employee's representation and that had Mr. Downes been properly informed that the four boxes had not been delivered, he would have had ample time to personally deliver the missing volumes to GSA by the established deadline.<sup>2</sup>

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. Carter Mach. Co., Inc., B-245008, Aug. 7, 1991, 91-2 CPD ¶ 143 at 2. A proposal delivered to an agency by commercial carrier, such as DHL, is considered to be hand carried and, if it arrives late, can only be considered if it is shown that some government impropriety was the paramount cause of the proposal's late arrival.

---

<sup>2</sup>In its initial protest letter to our Office, the protester argued that upon signing the receipt for Staubach's proposals, GSA's bid room employees improperly failed to verify that they had indeed received all eight pieces of correspondence, suggesting that the bid room staff was negligent in its duties. The only document in the record evidencing receipt of Staubach's proposals is a DHL "Shipment Airwaybill" signed by a GSA bid room employee. That document merely indicates that a package was delivered to GSA, and contrary to Staubach's suggestion, does not indicate the weight or quantity of the items delivered. In any event, in its comments on the agency report, the protester abandoned its claim that the GSA bid room employees signed for eight pieces of correspondence.

Motorola Inc., B-219592, July 24, 1985, 85-2 CPD ¶ 84 at 1-2. Thus, the question here is not whether there was mishandling--the concept of mishandling applies only after there has been receipt at the government installation, see Federal Acquisition Regulation § 52.215-10 (FAC 90-44)--but whether the telephone advice allegedly given to Mr. Downes constituted improper government action that was the paramount cause of the late receipt of Staubach's proposals. We think that it was not.

The government has no obligation to advise offerors of whether their proposals have arrived and its failure to do so, or to provide accurate information about whether a proposal is complete as received, does not provide grounds for requiring an agency to consider a late proposal. Selrico Servs., Inc., B-259709.2, May 1, 1995, 95-1 CPD ¶ 224 at 2. Thus, even if GSA's bid room employees inaccurately reported to Mr. Downes that "everything has been received," as the protester alleges, Staubach assumed the risk that the information might not be accurate or that the GSA employee was mistaken. This is a similar situation to Selrico Servs., Inc., supra, where an Air Force contract administrator mistakenly advised the protester that its bid had been received, a fact that did not relieve the protester of its responsibility to submit its bid on time and which, thus, did not require the government to accept the bid. In short, Mr. Downes's telephone inquiry did not relieve Staubach, through its agents--the consulting company, US Air Shuttle, and DHL--of its obligation to deliver its proposals to the proper place at the proper time. See Chemical Waste Management, Inc., B-215382, Sept. 10, 1984, 84-2 CPD ¶ 274 at 2.

Moreover, given the sequence of events leading up to the late delivery of Staubach's proposals, the information GSA's bid room employees provided to Mr. Downes, even if mistaken, cannot reasonably be viewed as the paramount cause for the late delivery of the four boxes. The late delivery was due to the failure of DHL to maintain Staubach's proposals together as a single shipment. Further, there is no evidence that DHL ever attempted to timely deliver the four boxes to the designated bid room, or that DHL was prevented from doing so by GSA. Finally, there is no evidence that after it became evident that the four boxes were separated from the envelopes during shipment, DHL, US Air Shuttle, or anyone else in the chain of custody made any attempts at identifying the sender or rightful owner of the boxes, or even made any efforts at contacting the intended recipient of the four boxes left behind at La Guardia Airport. Had DHL or any of the other parties responsible for transporting and delivering the boxes done so, there appears to have been sufficient time for DHL to have timely delivered them to GSA prior to closing. Accordingly, we think the record shows that it was the action (or inaction) of Staubach and its agents, not any oral advice from GSA, which was the paramount cause of the late receipt of Staubach's proposals.

Staubach also argues that the cover letters submitted with volume I of its proposals, together with the pricing information in that volume, contained sufficient

information to permit GSA to evaluate the key elements of volumes II and III of the proposals, and maintains that GSA could have obtained any missing details through discussions.

Rejection of a proposal is proper where the initial proposal is so deficient that in essence no meaningful proposal was submitted, and to allow the omissions to be cured after the time set for receipt of initial proposals would be inconsistent with the late proposals clause. Panasonic Communications & Sys. Co., B-239917, Oct. 10, 1990, 90-2 CPD ¶ 279 at 2. As explained earlier, the RFP contained specific instructions requiring offerors to provide detailed information in their technical (volume II) and key personnel (volume III) proposals, which represented a significant portion of the technical evaluation of proposals. Indeed, according to the protester's own description, its response to the technical and key personnel areas was so voluminous that it required packaging in four boxes. While the cover letters Staubach submitted with each volume I arguably summarized key points of the missing proposals, the brief, 1-page letters clearly do not contain the level of detail required by the RFP and cannot reasonably be viewed as a meaningful response to the RFP's technical and key personnel requirement. Staubach's failure to submit those volumes thus was a material omission, and to permit Staubach to submit the missing volumes after closing would be tantamount to improperly allowing the submission of a late proposal. RMS Indus., B-245539, Dec. 9, 1991, 91-2 CPD ¶ 528 at 3.

Finally, the protester argues that GSA should consider its late proposal because, since the four missing boxes were secured at the La Guardia Airport Lost and Found until their delivery on February 28, Staubach could not have altered its proposals during that time to gain a competitive advantage over other offerors.

The late proposal rules alleviate confusion, assure equal treatment of all offerors, and prevent one offeror from obtaining any unfair competitive advantage that might accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors. The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 CPD ¶ 660 at 4. While the government's application of the late proposal rules sometimes may seem harsh, and the government may lose the benefit of proposals that offer terms more advantageous than those that were timely received, protecting the integrity of the procurement process by ensuring that fair and impartial treatment is guaranteed and maintaining confidence in the competitive system are of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. Phoenix Research Group, Inc., B-240840, Dec. 21, 1990, 90-2 CPD ¶ 514 at 5.

The protest is denied.

Comptroller General  
of the United States