



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: States Roofing Corporation

File: B-286052

Date: November 8, 2000

Neil S. Lowenstein, Esq., Vandeventer Black, for the protester.
Clarence D. Long, III, Esq., Capt. Sky W. Smith, and Capt. Jennifer C. Whitko,
Department of the Air Force, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's proposal as late where preponderance of evidence shows that the proposal was not under government control prior to the time set for receipt of proposals because the protester did not arrive at the place designated for receipt of proposals until after the closing time had passed.

DECISION

States Roofing Corporation (SRC) protests the rejection of its late proposal under request for proposals (RFP) No. F-44600-00-R-0028, issued by the Department of the Air Force for roofing repair services. SRC contends that its proposal was received by the government prior to the closing time for receipt of proposals.

We deny the protest.

BACKGROUND

The RFP provided that sealed offers were due at "1CONS/LGCC, 74 Nealy Ave., Suite 100," by 4 p.m. local time on July 31, 2000, and that "ALL HAND CARRIED OFFERS MUST BE PLACED IN THE BID DEPOSITORY AT 74 NEALY AVE., LANGLEY AFB, VA." RFP at 1.

The facts, according to the agency, are as follows. On July 31, approximately 10 minutes before the 4 p.m. closing time, the Infrastructure Flight Chief at Langley (hereinafter "chief") and the contracting officer for this procurement retrieved

proposals from the bid box, which is located beside the entrance door and in front of Suite 100. Affidavits of Contracting Officer, Aug. 11, 2000, and Chief, Sept. 1, 2000. SRC's proposal was not in the box at this time. The contracting officer and the chief then went out on the front porch of the building to await delivery of a proposal from another offeror.

While the chief and the contracting officer were on the front porch, they received another proposal, but did not see SRC's representative enter the building or arrive in the parking lot in front of the building. Affidavits of Chief and Contracting Officer. At 4 p.m., according to the chief's watch, they came back inside, accounted for the proposals received up to that point, and then stamped a sheet of paper in the time-stamp machine located in Suite 100 to verify that the closing time had passed.¹ Id. The time stamp read: "00 JUL 31 PM 4:01." Agency Report (AR), Tab 6a. Shortly after this, they walked upstairs to begin opening the proposals. Affidavit of Chief. At this time, the receptionist, whose desk is in Suite 100, was standing in the doorway of the office next door, from where she could see the front door (the only entrance to the building), the bid box, and the porch. Affidavit of Receptionist, Aug. 15, 2000. Before entering the office next door, she saw the chief open the bid box before going upstairs. She did not see SRC's representative enter the building during this time. Id.

Throughout this time, the 14-year old daughter of the receptionist (hereinafter "daughter") was seated alone in Suite 100 and observed the chief and the contracting officer come downstairs, exit to the porch, receive proposals, return to Suite 100, and time-stamp a sheet of paper. Affidavit of Daughter, Aug. 15, 2000. According to the daughter's affidavit, a few minutes after the chief and the contracting officer returned upstairs, a man (the representative of the protester) entered the office and instructed her to "stamp 2 packages hastily," one of which was SRC's proposal.² Although she attempted to tell him that she did not work in the contracting office, he cut her off and "rush[ed]" her to time-stamp the packages. She attempted to do so, but could not fit them into the time-stamp machine because they were too thick. The protester then instructed her to write "3:59" on the packages and to sign her name. She complied and then, accompanied by the protester, went next door to the office where the receptionist (her mother) was. Upon hearing what happened, the receptionist informed SRC's representative that his proposal was late and

¹ According to the agency, the time-stamp clock is set to U.S. Naval Observatory time and is used "to set bid opening." Government's Response to Protestor's Rebuttal at 1.f. The time on the clock reportedly was verified with Naval Observatory time on July 27 and again at 4:30 p.m. on July 31; in both instances, the clock time was the same as that at the Naval Observatory. Contracting Officer's Statement at 4.

² The other was the unsealed proposal of another offeror that had asked SRC to deliver its proposal. Affidavit of Protester, Aug. 25, 2000.

immediately returned to Suite 100 and time-stamped a sheet of paper. Affidavits of Receptionist and Daughter. The time stamp on this sheet read: "00 JUL 31 PM 4:05." AR tab 6b. The receptionist then turned the matter over to the chief and the contracting officer, who also informed the protester that the proposal was late and showed him the paper time-stamped "4:01." Affidavits of Chief and Contracting Officer.

The protester has presented a different account of the facts. Its original version of the events, set forth in its letter of protest, was as follows:

[The protester], President of States Roofing Corporation ("SRC"), hand delivered SRC's offer before [4 p.m.], and provided [it] to your employee at the front desk. At or about [3:58 p.m.,] that employee attempted to time stamp the offer using your time clock, but the offer package was too thick to fit into the time stamp. She did, however, confirm by hand note and signature on the offer envelope that she received it as of [3:59 p.m.].

Protest attach. 3, Letter from SRC (Aug. 2, 2000).

In a subsequent affidavit, prepared after the agency submitted its report, the protester provided the following additional details. The protester's representative was dropped off in front of the building prior to 4 p.m., and he went immediately to Suite 100. Affidavit of Protester, Aug. 25, 2000. There, he found the daughter sitting at the receptionist's desk and, based on prior experience, concluded that she must be the person who would receive proposals.³ At that time, the wall clock showed an unspecified time before 4 p.m. The daughter "never indicated . . . that the government did not employ her or that she was not authorized to accept proposals" and, when asked, said that she was accepting proposals. When she was unsuccessful in her attempt to time-stamp the proposal, "[a]t [his] request, she thereafter noted the time by hand written notation, and signed the same." All of this occurred prior to 4 p.m. according to the wall clock; the time-stamp clock had no exterior display. The daughter placed SRC's proposal on the counter and the protester left the office to look for the "proposal opening." As he "walked through the building," he encountered the receptionist, advised her of what had happened, and they returned to Suite 100, where SRC's proposal remained on the counter. Affidavit of Protester. He then discussed the matter with the chief and the contracting officer, who showed him the "4:01" time-stamp and informed him that the proposal was late.

³ At the time, the daughter was dressed in "blue jeans and a t-shirt and had pig tails in her hair." Government's Response to Protester's Rebuttal at 3.b.

By letter of August 2, SRC requested the agency to reconsider its determination that its proposal was late. The agency declined, and SRC filed this protest with our Office on August 9.

ANALYSIS

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of a proposal. Federal Acquisition Regulation (FAR) § 15.208(b); The Staubach Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 3. In determining whether a proposal was submitted late, we consider all relevant evidence in the record, including statements by parties on behalf of the protester and the agency, to ascertain whether a preponderance of the evidence shows that the proposal was at the government installation designated for receipt of proposals, and under the government's control, prior to the time set for receipt of proposals. FAR § 15.208(b)(1)(ii); see Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6; International Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146 at 3. Considering all of the evidence here, we conclude that the agency properly determined that SRC's proposal was submitted late.

The timeliness of SRC's proposal turns solely on the sequence of two events--the contracting officer's time-stamping of the sheet of paper at 4:01, and the protester's arrival in Suite 100. If SRC arrived prior to the time-stamping, its proposal was timely submitted, since the contracting officer used the time-stamping to signify that the closing time had passed;⁴ if the protester's delivery of its proposal occurred after the sheet of paper was time-stamped, it was late. The most probative evidence of the sequence of these events is the statement of the daughter, who undisputedly was actually in Suite 100 during the entire time in question, and was the only person who saw both the contracting officer time-stamp the piece of paper at 4:01, and SRC deliver its proposal. As noted, the daughter states that she observed the contracting officer and chief return from the porch and time-stamp the sheet of paper, and that it was not until after this happened, and the agency officials left Suite 100, that she observed SRC's representative enter with the firm's proposal. SRC does not challenge the daughter's account of the sequence of the two events and, indeed, is not in a position to do so since its representative did not witness the 4:01 time stamp.

The only evidence in the record that supports SRC's account of the sequence of events is the "3:59" notation written on SRC's proposal package by the daughter, and the protester's representative's statement. We are not persuaded by this evidence, however, because it appears to reflect a discrepancy between the time on the wall clock and the time on the time-stamp clock. The time written on the package and the time of delivery according to the protester's representative were based on the

⁴ In this regard, the agency reports that the time-stamp machine is used as the official clock for determining proposal deadlines.

time shown on the wall clock in Suite 100, while the passing of the closing time was signified by the time-stamp clock. According to the agency, the wall clock in Suite 100 runs slow relative to the time-stamp clock.⁵ The protester has no basis for disputing the difference in the clocks' respective times since, as he acknowledges, the time-stamp clock did not have an exterior display. This means that the events SRC maintains occurred just prior to 4:00 p.m. actually would have occurred shortly after that time according to the time-stamp clock. That is, while SRC's representative asserts that he delivered the proposal by 3:58 or 3:59 p.m. based on the wall clock, it appears he may not have been in Suite 100 until after 4 p.m. according to the time-stamp machine. We conclude that SRC's proposal was not submitted prior to the closing time and that the agency properly rejected it as late.⁶

The protest is denied.⁷

Anthony H. Gamboa
Acting General Counsel

⁵ While the contracting officer initially stated that the clock was approximately 5 minutes fast, the agency subsequently explained that the contracting officer knew only that the clock had accuracy problems and could not remember if it ran fast or slow. Government's Response to Protester's Rebuttal at 1.f. Meanwhile, the receptionist, who works in Suite 100, states unequivocally that the clock, which is battery-operated, runs slow. Affidavit of Receptionist. Given the agency's explanation, and the fact that the receptionist is in the best position to know how accurate the clock is, it is reasonable to conclude that the wall clock ran slow.

⁶ SRC's driver states in his affidavit that he dropped off SRC's representative, and saw him enter Suite 100, prior to 4:00 p.m. Affidavit of Driver, Aug. 25, 2000. According to the driver, he was "sure of that time because he had the vehicle's radio on, . . . and the news, which regularly begins at the top of the hour, had not yet begun." *Id.* This uncorroborated statement is not persuasive, however, since the driver does not state when, if ever, he heard the news begin after dropping off the protester; based on his account, it is possible to conclude that the news report had been completed before he turned on the radio. Similarly, there is no way to determine whether he was mistaken about the station or its news schedule, or whether the source the radio station uses for scheduling its news reports is synchronized with Naval Observatory time.

⁷ SRC requested that we conduct a hearing on its protest to resolve the inconsistencies in the agency's and protester's versions of the events. However, because we find that the record is sufficient to establish that SRC's proposal was late, no useful purpose would be served by conducting a hearing.