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FILE: B-186292

DATE: June 16, 1976

MATTER OF: Bertolini Engineering Company

DIGEST:

Protester's proposal, hand-carried after time specified in RFP for receipt of proposals due to cancellation of commercial airline flight, was properly not considered since the lateness could not be excused under exceptions in applicable late proposal clause in RFP and no improper Government action was cause of lateness. Uniqueness of design approach and possible monetary advantage are not reasons to consider late proposal.

This is a protest by the Bertolini Engineering Company against the refusal of the United States Army Mobility Equipment Research and Development Center (MERADCOM) to consider its hand-carried proposal submitted 122 minutes after the time specified for receipt of proposals under request for proposals (RFP) No. DAAG53-76-R-0757, for insulated refrigerated containers. The late submission, according to Bertolini, resulted from the cancellation of a commercial airline flight.

The RFP contained the clause entitled "Late Proposals, Modifications of Proposals and Withdrawals of Proposals (1974 Apr)," prescribed by Armed Services Procurement Regulation (ASPR) §§ 3-506(b) and 7-2002.4 (1975 ed.). Under the terms of the clause, MERADCOM informed Bertolini that the proposal would not be considered because it was late.

Bertolini admits that the hand-carried proposal was late and does not allege that there was any improper action on the part of the Government to cause the lateness.

The proposal was properly rejected under the above-cited clause because it was not mailed or the only proposal received. Generally, an offeror is charged with the responsibility of ensuring that its proposal arrives at the proper place at the proper time. By choosing a method of delivery other than those specified in the late proposal clause, an offeror assumes a high degree of risk

that its proposal will be rejected if untimely delivered. Even when a hand-carried proposal is delivered late, we have permitted acceptance of the proposal where improper action by the Government was the proximate cause of the lateness. But when actions of the offeror are the significant or intervening cause of the delay in delivering the proposal, whether anticipated or not, a late proposal is not for acceptance. Young Engineering Systems, 55 Comp. Gen. 754 (1976), 76-1 CPD 96.

Bertolini cites the uniqueness of its design approach and the possible monetary advantage to the Government as reasons for considering its late proposal. While it may be true that the design is unique and the Government might obtain a monetary advantage, we do not believe that this outweighs the main consideration, namely, the maintenance of confidence in the procurement system rather than the possible advantage to be gained in a single procurement. The manner in which the Government conducts its procurements must be subject to standards so that all who deal with it will be treated equally and impartially. By the even application of its late proposal rules, the Government may lose a proposal that offers terms more advantageous than those timely received, yet confidence in the system is maintained. Emergency Care Research Institute, B-181204, August 23, 1974, 74-2 CPD 118.

Parenthetically, we observe that the predecessor ASPR late proposal clause provided for consideration of a late proposal offering some important or scientific breakthrough. However, this provision was specifically deleted by Defense Procurement Circular No. 110, effective August 1, 1973.

Accordingly, the protest must be denied.


Deputy Comptroller General
of the United States