

PLCG

DECISION



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

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FILE: B-195048

DATE: June 19, 1979

MATTER OF: Hughes Industries

DLG 01899

DIGEST:

Protester's late proposal was properly rejected by procuring agency since proposal was not sent by certified or registered mail and there has been no showing that proposal was mishandled by agency after its receipt.

Account 840
Hughes Industries (Hughes) protests the rejection of its proposal as late by the United States Army Armament Materiel Readiness Command (Army), Rock Island, Illinois, under request for proposals (RFP) No. DAAA09-79-R-4680.

The closing date set for receipt of proposals was 3:45 p.m., May 22, 1979. Hughes states that its proposal was signed and sent via the United States Postal Service, by regular mail, to the Army on May 18, 1979. However, Hughes' proposal was not received by the Army until May 23, 1979, 1 day after the closing date for receipt of initial proposals.

Protester did
Hughes does not dispute the fact that its proposal was received late. Hughes, however, contends that its offer should be considered because: (1) Hughes is currently and has in the past several years manufactured the requested procurement item, and (2) it seems "wasteful" for the Government to reject an offer from a "reputable vendor" because of the Postal Service's failure to timely deliver its proposal when there was sufficient time to do so.

Defense Acquisition Regulation § 7-2002.4 (1976 ed.), "Late Proposals, Modifications of Proposals and Withdrawals of Proposals," which was incorporated into the RFP, states:

[Protest Against Proposal Rejection]

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"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers * * *;

"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

"(iii) It is the only proposal received."

It is our view that the rejection of Hughes' proposal by the contracting officer was proper. Hughes' proposal, in order to be properly considered, should have been delivered to the designated office prior to the closing date set for receipt of initial proposals, but was not received until 1 day after the time specified. Our Office has consistently held that an offeror has the responsibility to assure timely arrival of its offer and must bear the responsibility for its late arrival. Late receipt of an offer will result in its rejection unless the specific conditions of the RFP are met. H. Oliver Welch & Company, B-193870, February 9, 1979, 79-1 CPD 96.

Under the terms of the RFP a late offer may be considered if sent by registered or certified mail in the manner outlined above, which is not the case here, or where the "late receipt was due solely to mishandling by the Government installation" making the procurement. Furthermore, the Postal Service's failure to timely deliver the proposal does not

constitute Government mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.

Generally, our Office requests a report from the procuring agency upon receipt of a bid protest in accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1978). However, where it is clear from a protester's submission that the protest is legally without merit, we will decide the matter on that basis. H. Oliver Welch & Company, supra.

Therefore, the protest ^{was} ~~is summarily~~ denied.


Deputy Comptroller General
of the United States