

15-364

Support
PCI

DECISION



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

[Protest of Proposal Rejection as Late]

FILE: B-198494

DATE: November 6, 1980

MATTER OF: Poli-Com, Inc.

DIGEST:

1. Where there is no time/date stamp or other documentary evidence to establish when offer received late by contracting activity negotiator was received at Government installation, it cannot be concluded that late delivery to contracting activity negotiator was due to mishandling after receipt at Government installation.
2. Late best and final offer was not acceptable as late modification of otherwise successful offer more favorable to Government where original low offer was displaced by another offeror's timely "best and final" offer.

Poli-Com, Inc. (PCI), protests that its best and final offer submitted under request for proposals (RFP) No. N00104-80-R-ZM48 issued by the Navy Ships Parts Control Center (NSPCC), Mechanicsburg, Pennsylvania, was improperly rejected as a late proposal.

Best and final offers were required to be submitted by 4 p.m. on April 3, 1980. PCI's best and final offer was received by the contracting activity negotiator the next day, April 4, 1980, at 2:45 p.m. PCI intimates that the failure of the contracting activity negotiator to receive the offer on time was due to mishandling at the installation because it was sent by mailgram at 7:48 a.m. on April 2, 1980, after PCI was assured by Western Union and the post office that delivery would be made

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within 24 hours. Alternatively, PCI contends that the offer should have been accepted as a late modification of an otherwise successful offer more favorable to the Government as provided in the late proposal clause of the RFP.)

On the matter of mishandling, the late proposal clause (Defense Acquisition Regulation (DAR) § 7-2004.4 (1976 ed.)) provides that a late offer resulting from a contracting officer's request for a best and final offer will be considered if the late receipt is due solely to mishandling by the Government after receipt at the Government installation. (Where an offer arrives in the office designated in the RFP after the time provided for the receipt of offers, before we can consider the question of Government mishandling, the time of receipt at the installation must be established.) Lockley Manufacturing Co., Inc., 59 Comp. Gen. 189 (1980), 80-1 CPD 15. DAR provides and we have held that (the only acceptable evidence of receipt at the Government installation is the time/date stamp or other documentary evidence of receipt maintained by the installation.) Lockley Manufacturing Co., Inc., *supra*. (There is no time/date stamp or other documentary evidence in this case to establish when the offer was received at the installation.) Therefore, we are unable to conclude that the late delivery to the contracting activity negotiator was due to mishandling after timely receipt at the Government installation.)

By letter of today, we are bringing to the attention of the Secretary of the Navy the provision in the late proposal clause providing for establishing the time of receipt of offers at the Government installation by a time/date stamp or other documentary evidence and we are recommending that NSPCC take appropriate steps to comply with this requirement in the future.

As to PCI's contention that its best and final offer should have been accepted as a late modification of an otherwise successful offer more favorable to the Government, (since PCI's low offer in response to the RFP was displaced by another offeror's timely

best and final offer, PCI's original proposal was no longer the otherwise successful offer. Therefore, PCI's late proposal was not acceptable on that basis.>

Accordingly, (the protest is denied.)

PCI also contends that the Navy unreasonably delayed before submitting its report to our Office. Our Bid Protest Procedures, 4 C.F.R. § 20.3(c) (1980), state that we shall request an agency to submit a report on a bid protest as expeditiously as possible, generally within 25 working days. In this case, more than 3-1/2 months elapsed between our request and receipt of the Navy's report. We are bringing the delay to the attention of the Secretary of the Navy with a request that appropriate steps be taken to see that the Bid Protest Procedures are followed in the future.

Henry D. Van Cleave

For the Comptroller General
of the United States