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DECISION



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

[Protest of Proposal Rejection for Lateness]

FILE: B-200590

DATE: December 15, 1980

MATTER OF: MTS Systems Corporation DLG 05637

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, General Accounting Office will render decision without obtaining report from agency.
2. Defense Acquisition Regulation section 2-402.3, which permits contracting officer to postpone bid opening when unanticipated events indicate that bids "of an important segment of bidders have been delayed in the mails," is not applicable where protester's late proposal was sent by Federal Express, not mail, and there is no evidence that other offerors were precluded from consideration by unanticipated events.

MTS Systems Corporation (MTS) protests the Air Force's refusal to consider its offer which was submitted after the time specified for receipt of offers contained in solicitation No. F08636-80-R-0230.

According to MTS's protest letter, MTS's proposal was delayed as a result of weather problems and did not reach its destination, the procurement office at the Armament Division of Eglin Air Force Base, until September 18, 1980, at 11:30 a.m. The proposal due date was September 17, 1980, at 4:00 p.m., and the late proposal was not considered by the Air Force. AGC00237

MTS argues that its proposal should have been considered because submission of its proposal was delayed by unexpected weather conditions, and because of the weather conditions, the contracting officer should have postponed the proposal due date. MTS

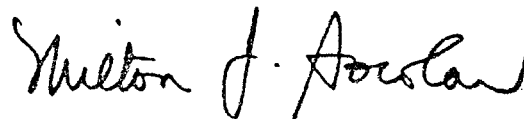
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states that under Defense Acquisition Regulation (DAR) § 2-402.3 (1976 ed.), the contracting officer should have extended the due date on the basis that an important segment of the offerors was delayed in submitting proposals by circumstances beyond their control, i.e., weather conditions, and without fault or negligence. MTS requests that its proposal and all others submitted late be considered.

This case falls within the ambit of our decisions which hold that where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1980). O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267.

Under DAR § 2-402.3 (1976 ed.), contracting officers do have the authority to delay bid openings when unanticipated events indicate that bids "of an important segment of bidders have been delayed in the mails." However, this regulation, by its terms, applies to delays in the mails and is not applicable to delays by commercial carriers such as Federal Express. DAR § 2-402.3 (1976 ed.); see Unitron Engineering Co., Inc., B-194707, 58 Comp. Gen. 748 (1979), 79-2 CPD 155. Also, contrary to MTS's allegation that other proposals were delayed by the weather conditions and thus not considered, the Air Force advises that there is no evidence that any other offeror was precluded from submitting a timely offer by the weather conditions. Thus, there is no evidence that an important segment of offerors as contemplated by the DAR provision was precluded by the delay from submitting a proposal. In these circumstances, we believe that the Air Force acted properly in refusing to consider MTS's late proposals. Northwest Instrument, B-200873, November 18, 1980, 80-2 CPD ____; Unitron Engineering Co., Inc., supra.

Therefore, the protest is summarily denied.



For the Comptroller General
of the United States