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DECISION



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

[Protest of Bid Rejection for Lateness]

FILE: B-201622

DATE: April 27, 1981

MATTER OF: Tamar Productions, Inc.

DIGEST:

1. Hand-carried proposal which was not received at office designated in RFP by time specified properly was rejected as late despite absence of standard late offer clause in solicitation, since solicitation adequately advised offerors that proposals must be received by specified time in order to be considered for award.
2. Allegation that awardee does not have equipment to fulfill solicitation's requirements is without merit where agency found awardee's proposal acceptable under evaluation scheme containing 70 points for technical factors (including 20 points for facilities) and protester has proffered no evidence to show that agency's position was unreasonable.
3. GAO will not review contracting agency's affirmative determination of responsibility except in limited circumstances.

Tamar Productions, Inc. protests the refusal of the Department of the Interior to consider its late hand-carried proposal under request for proposals (RFP) No. AA851-RP1-3 for post-production picture and sound editorial services. Tamar also contends that the awardee, Cine-Motion, Inc., cannot meet the agency's requirements.

The protest is denied in part and dismissed in part.

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Tamar contends that there is no legal basis for the rejection of its offer since the late offer clause contained in the RFP, clause 8 of Standard Form (SF)-33A, March 1969, by its terms does not apply to a negotiated solicitation issued by a civilian agency.

In this regard, Interior advises that it inadvertently attached the 1969 edition of SF-33A to the solicitation rather than the current SF-33A, which was revised in July 1977. Clause 8 of SF-33A, March 1969, entitled "Late Offers and Modifications or Withdrawals," states that " * * * Unless otherwise provided, this paragraph does not apply to negotiated solicitations issued by civilian agencies." Clause 8 of the revised SF-33A, in contrast, is specifically applicable to the receipt of late proposals in all negotiated procurements.

The applicability of the late offer clause to the solicitation is not germane. With or without that clause, we think offerors are on notice that proposals submitted after the time set for their receipt are to be rejected as late. First, the Federal Procurement Regulations at section 1-3.802-1(b) (1964 ed.) provide that proposals received in the office designated in the RFP after the exact time specified are late except in cases not applicable here. Second, offerors were specifically advised by the solicitation that offers will be received "until 4:00 P.M. local time 11/25/80," and hand-carried offers were directed to be deposited in a specific depository in a specified location. In our view, the late offer clause itself only establishes certain specified circumstances under which an offer already late by the terms of the solicitation could be considered, notwithstanding its tardiness. Thus, the inapplicability of that clause certainly does not permit the agency to accept a late offer. Consequently, we view rejection of the late offer as proper.

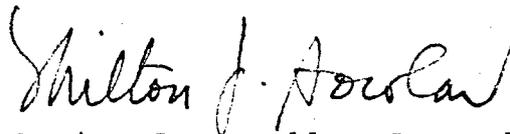
Tamar also alleges that Cine-Motion does not have the equipment to fulfill the RFP's requirement.

The RFP's evaluation scheme assigned 70 points to technical factors (including 20 points to facilities). Award was to be made to the offeror whose offer was most advantageous to the Government, technical, cost and other factors considered. Interior evidently believed that Cine-Motion's offer was acceptable with

respect to the firm's facilities, and Tamar has proffered no evidence to show that Interior's position was unreasonable. The protester has the burden to affirmatively prove its case. Dynal Associates, Inc., B-197348, July 14, 1980, 80-2 CPD 29. In this respect, Tamar states only that it has "serious doubt" that the awardee has the equipment to fulfill the contract's requirement. In our view, such a statement, without more, is not sufficient to meet the protester's burden of proof.

To the extent that Tamar is challenging Interior's determination that Cine-Motion is a responsible firm, this Office does not review affirmative determinations of responsibility except where the protester alleges fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. National Ambulance and Escort Service, Inc., B-196511, November 8, 1979, 79-2 CPD 342. Neither exception is applicable here.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States