

DECISION

10150 PF24770
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-211234

DATE: April 11, 1983**MATTER OF:**

Photonics Technology, Inc.

DIGEST:

Offeror is responsible for delivery of its proposal to the proper place at proper time, and any exception to the general rule requiring rejection of late proposals is permitted only in the exact circumstances provided by the solicitation. Proposal delivered by commercial carrier--even if timely received in the main receiving area--generally must be rejected if it arrives at the office designated in the solicitation after the exact time specified.

Photonics Technology, Inc. protests the Army's rejection of its proposal under solicitation No. DAAK20-83-Q-0268. Photonics Technology sent its proposal via Federal Express in an envelope addressed to the contracting office identified on the solicitation's cover sheet instead of the office designated in the solicitation for the receipt of proposals. The proposal was delivered to the contracting activity's mailroom 6 hours before the time set in the solicitation for the receipt of proposals, but was not forwarded to the office for proposal receipt until 2 days later. Because Photonics Technology failed to deliver its proposal to the designated office on time, the Army refused to consider the offer. The protester contends that since the Federal Express envelope was plainly marked with the solicitation number and the date and time set for the receipt of proposals, the mailroom personnel were on notice of the urgency of forwarding the envelope, and their failure to expedite the handling of the envelope was unconscionable.

We summarily deny the protest.

The general rule is that a bidder or offeror is responsible for delivery of its bid or proposal to the proper place at the proper time; any exception to the

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rule requiring rejection of late bids or proposals is permitted only in the exact circumstances provided by the regulations and solicitation. General Atomic Company, B-202165, May 27, 1981, 81-1 CPD 415. Moreover, whether a bid or proposal is late is measured by its time of arrival at the office designated in the solicitation, not by its time of arrival at an agency's central mailroom. Lectro-Magnetics, Inc., 56 Comp. Gen. 50 (1976), 76-2 CPD 371.

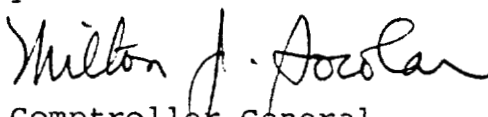
A handcarried bid or proposal--even if timely delivered to a central receiving area or mailroom by the offeror or a commercial carrier acting as its agent--usually must be rejected if it arrives at the office designated in the solicitation after the exact time specified. General Atomic Company, *supra*. The reason is that while the Defense Acquisition Regulation (DAR) provides that in certain circumstances mailed bids or proposals may be considered even though they arrive late at the designated office, the regulation includes no exception for late handcarried bids or proposals. DAR §§ 3-506, 7-2002.4 (1976 ed.).

On the theory that a literal application of the regulations would in some cases contravene their intent and spirit, our Office, in a narrow exception to the general rule, has allowed a late handcarried bid or proposal to be accepted if it was delivered on time to the wrong place and it can be shown that some action by the Government was the paramount cause for the late delivery to the proper place. In such case, it also must be shown that there has been no compromise to the integrity of the competitive system. For example, in Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425, we held that the Army could consider a bid which Federal Express had attempted to deliver to the designated office at Redstone Arsenal, Alabama, but was prevented from doing so by Government personnel following internal security regulations. We stated that those regulations did not mandate delivery to the central receiving area, and would have permitted the carrier to deliver the bid to the proper addressee after first reporting to the central receiving area. We also found that from the time of receipt there had been no opportunity for tampering by the bidder. The case was distinguished from earlier ones in which commercial carriers apparently had delivered bids to the wrong offices on their own initiative; in Scot, they were misdirected by Government personnel.

In the instant case, the late delivery resulted from Photonics Technology's misaddressing the envelope containing its proposal, and not from any other cause. Certainly, there is no evidence that Federal Express attempted to deliver the envelope to the correct office but was directed by the agency to the mailroom. By delivering the proposal to a different room than designated in the solicitation, Federal Express placed the proposal in the agency's internal distribution system and subjected it to normal procedures for forwarding of items within that system. In this respect, although the protester suggests its proposal was mishandled by the mailroom, we do not know any reason why the mailroom personnel, even if they noticed the envelope markings concerning solicitation number and time and date for receipt, should have forwarded the envelope to any other address than that written on it.

Moreover, while the DAR contains an exception permitting the consideration of late mailed proposals if the lateness was caused by Government mishandling, the exception does not extend to handcarried proposals, whether delivered by the offeror directly or through a commercial carrier. Having chosen to use a commercial carrier rather than the mail, Photonics Technology cannot invoke the mishandling exception of the regulation. General Atomic Company, supra.

The protest is summarily denied.

for 
Comptroller General
of the United States