

DECISION

0701
McConne
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-209611**DATE:** April 15, 1983**MATTER OF:** Control Analysis Corporation**DIGEST:**

Where the United States Postal Service attempts unsuccessfully to deliver a proposal by Express Mail 1/2 hour before the closing time for receipt of proposals, the proposal may not thereafter be considered under the solicitation's late proposal clause since the late delivery was not due solely to Government mishandling after receipt at the Government installation.

Control Analysis Corporation (CAC) protests the rejection of its proposal for the development of a computer simulator model under solicitation No. F49620-82-R-0010 issued by the Department of the Air Force. CAC contends that the Air Force improperly rejected its proposal as late.

We deny the protest.

The solicitation specified the closing date for receipt of proposals as July 29, 1982, at 2:00 p.m., and indicated that offerors were to deposit hand-carried proposals in Room C-116, Building 410, of Bolling Air Force Base, Washington, D.C. CAC mailed its proposal the morning of July 28 from Mill Valley, California, by Express Mail with 24-hour delivery guaranteed by the United States Postal Service. The mailing label was addressed to "USAF, AFSC, Air Force Office of Scientific Research, Building 410, Bolling AFB DC 20332," the correct address for mailed proposals. Notations on the label indicate that the Postal Service unsuccessfully attempted delivery to an unspecified destination on July 29 at 1:30 p.m. and thereafter made delivery to an unspecified destination on July 30 at 8:30 a.m. The contracting officer states that he received the proposal on August 2.

025334

CAC contends that the Postal Service was unable to deliver the firm's proposal to the correct address on July 29 (approximately 1/2 hour before closing time) because there was no one at that address. Thus, CAC concludes that the late delivery was due to Government mishandling and that its proposal therefore should be considered under the terms of the solicitation's late proposal clause. We disagree.

We have recognized that the terms of the late proposal clause, with rare exceptions, should be strictly construed. See Decilog, Inc., B-193914, February 5, 1979, 79-1 CPD 81. In this case, the clause would have permitted acceptance of CAC's proposal if it could be shown that the late receipt "was due solely to mishandling by the Government after receipt at the Government installation * * *." (Emphasis added.) Defense Acquisition Regulation § 7-2002.4. Since receipt by the Postal Service is not receipt at a Government installation, the Air Force here had not received CAC's proposal before the closing time and thus could not have caused its late delivery through mishandling. See Decilog, Inc., supra.

There are circumstances, however, not within the contemplation of the late proposal clause that justify consideration rather than rejection of a late proposal. For example, where the record clearly shows that Government mishandling in the process of receipt is the paramount cause of the tardy delivery, a contracting officer should not reject a proposal based on a strict and literal interpretation of the late proposal clause since doing so would contravene the intent of the late proposal regulations. CWC, Inc., B-204445, December 15, 1981, 81-2 CPD 475.

On this record, however, we are unable to find that Government mishandling or other improper action caused the late receipt. In this respect, the Air Force asserts that both the base post office (where mailed offers would be delivered) and the location designated in the solicitation for the receipt of hand-carried proposals were staffed at the time of the alleged attempted delivery and that none of the staff recalls a delivery attempt. We also note that CAC's mailing label did not contain the room number specified in the solicitation for the receipt of hand-carried offers or the name of the buyer identified in the address specified for mailed bids. Thus, we think it likely in

B-209611

this case that the postal employee attempting to deliver the parcel simply did not find the proper office in the building specified on CAC's label. Under these circumstances, we conclude that the Air Force properly rejected CAC's proposal as late since it does not appear that Government mishandling in the process of receipt was the paramount cause of delay.

The protest is denied.

J. H. Barclay, Jr.
for Comptroller General
of the United States