

**DECISION**

27525

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

**FILE:** B-213429

**DATE:** February 27, 1984

**MATTER OF:** DPER Corporation

**DIGEST:**

Where the United States Postal Service first delivers the protester's best and final offer to the government installation 19 hours after the date specified by the contracting officer for receipt of best and final offers, the protester's offer cannot 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.

DPER Corporation (DPER) protests the rejection for lateness of its best and final offer under request for proposals (RFP) DTFA-02-83-R-00597 issued by the Department of Transportation, Federal Aviation Administration (FAA). The RFP is for the overhaul and repair of typing units and other electronic equipment at the FAA Aeronautical Center in Oklahoma City, Oklahoma. Award of a contract is being held in abeyance by the FAA pending resolution of DPER's protest.

DPER contends that the FAA is responsible for its best and final offer being late because the agency issued instructions to the United States Postal Service regarding the delivery of express mail to the FAA complex in Oklahoma City which caused DPER's bid to be delivered late.

For the reasons set forth below, we find DPER's protest to be without merit.

The RFP was issued to 20 companies, three of which, including DPER, submitted proposals on the July 7, 1983, closing date. The FAA then conducted negotiations with the three offerors on August 19, 24, and 26, 1983. By telegram dated September 19, 1983, the FAA contracting officer gave the following instructions to the offerors regarding the submission of best and final offers:

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123509

"YOU ARE HEREBY NOTIFIED THAT NEGOTIATIONS ON OUR SOLICITATION DTFA-02-83-R-00597 WILL CLOSE AT 4:30 P.M., CST, SEPTEMBER 28, 1983. YOUR BEST AND FINAL OFFER MUST ACKNOWLEDGE AMENDMENT TWO TO THE SOLICITATION. YOUR RESPONSE SHOULD ALSO INCLUDE (1) THE DISCOUNT YOU OFFER ON REPLACEMENT PARTS (IF ANY); AND (2) AN ACCEPTANCE PERIOD FOR YOUR BEST AND FINAL OFFER OF AT LEAST 90 CALENDAR DAYS. YOUR BEST AND FINAL OFFER MUST BE RECEIVED IN THIS OFFICE BY 4:30 P.M., SEPTEMBER 28, 1983. ANY REVISIONS RECEIVED AFTER THAT DATE WILL BE TREATED AS A LATE OFFER IN ACCORDANCE WITH LATE OFFERS AND MODIFICATION PROVISIONS OF THE SOLICITATION. ALSO, AFTER 4:30 P.M., SEPTEMBER 28, 1983, NO FURTHER INFORMATION WILL BE FURNISHED OFFERORS UNTIL AWARD HAS BEEN MADE."

In addition, the FAA contracting officer telephoned the three offerors on September 19, 1983, and notified them that they had to make sure that best and final offers reached the Bid and Proposal Officer, AAC-75, at the Contracting Branch in room 373 of the multi-purpose building, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma, 73125. The contracting officer further advised the offerors that their offers should not be sent to the FAA's Post Office Box in the Oklahoma City Post Office. Finally, the contracting officer cautioned the offerors that if a best and final offer was received late by the Bid and Proposal Officer, it would be considered as a late offer under the terms of the solicitation.

At the September 28, 1983, closing date, best and final offers were received from two of the offerors. However, DPER'S best and final offer, which was sent by the United States Postal Service's Express Mail, was not received by the FAA Aeronautical Center's mailroom until 8:30 a.m., on the morning of September 29, 1983. At 11:34 a.m., on the same morning, it was delivered by mailroom personnel to the Bid and Proposal Officer in the Center's contract branch. Because DPER's best and final was received after the 4:30 p.m., September 28, 1983, closing date, the contracting officer rejected it as a late offer and returned it unopened to DPER.

DPER emphasizes that it properly addressed its best and final offer pursuant to the FAA contracting officer's instructions and did not use the FAA Post Office Box number in Oklahoma City. DPER also claims that the United States Postal Service Express Mail receipt shows that the Postal

Service attempted to deliver its best and final offer to the FAA Aeronautical Center at 12:30 p.m., on September 28, 1983. DPER asserts that the FAA refused delivery at that time because of instructions on Post Office Department Form 1093 which directs the Postal Service not to deliver mail to the various sites at the Aeronautical Center, but instead to first deliver mail to an FAA box in the Main Post Office in Oklahoma City. Thus, DPER takes the position that since the FAA is responsible for delaying the delivery of mail to the proper addressee with "the issuance of POD Form 1093," the FAA should take such delay into consideration in calculating the time DPER's best and final offer was technically received.

The FAA states that it has found no evidence to indicate that DPER's best and final offer was late because of an act or omission on the part of the FAA. More specifically, the FAA states that it has been unable to find any instruction it made pursuant to Post Office Department Form 1093 which directs delivery of addressed mail to the Main Post Office in Oklahoma City rather than to the FAA Aeronautical Center at 6500 South MacArthur Boulevard. Consequently, the FAA argues that DPER's best and final offer was simply not delivered to the contracting branch at the Aeronautical Center until 19 hours after the time designated by the contracting officer as the closing date for receipt of best and final offers.

We have consistently held that an offeror has the responsibility to assure the timely arrival of its proposal and must bear the responsibility for its late arrival unless the specific conditions of the solicitation are met. Hubbs-Sea World Research Institute, B-210579, March 1, 1983, 83-1 CPD 193. Here, the specific conditions permitting the consideration of a late proposal are set forth in paragraph 8, "Late Proposals, Modifications of Proposals, and Withdrawal of Proposals," of Standard Form 33-A, "Solicitation Instructions and Conditions," as follows:

"(c) A modification resulting from the contracting officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation."

Before we can consider the question of government mishandling, the time of receipt at the installation must be established. Poli-Com, Inc., B-198494, November 6, 1980, 80-2 CPD 341. In this regard, we have held that receipt by the Postal Service is not receipt at a government installation. Hubbs-Sea World Research Institute, supra; Control Analysis Corporation, B-209611, April 15, 1983, 83-1 CPD 413. Therefore, since receipt by the Post Office in Oklahoma City was not at a government installation, the FAA in this case did not receive DPER's best and final offer before the 4:30 p.m., September 28, 1983, closing date specified by the contracting office and, as a consequence, could not have caused the late delivery of the offer through mishandling.

There are circumstances, however, not within the contemplation of the standard form late proposal clause that justify consideration rather than rejection of a late offer. For example, where the record clearly shows contracting agency mishandling in the process of receipt is the paramount cause of the tardy delivery, a contracting officer should not reject an offer based on a strict and literal interpretation of the solicitation's late proposal clause because to do so would contravene the intent of the late proposal regulations. Control Analysis Corporation, supra.

From our review of the record, we are unable to find that agency mishandling or other improper action caused the late receipt of DPER's best and final offer. With respect to DPER's allegation that the Postal Service attempted to deliver its best and final offer to the FAA at 12:30 p.m., on September 28, 1983, the record shows that the delivery in question was actually the delivery made to the Main Post Office in Oklahoma from the Post Office in the city that DPER mailed its best and final offer. As to DPER's allegation that the FAA gave special instructions to the Oklahoma City Post Office regarding the delivery of specifically addressed mail, we find nothing in the record to support such allegation. The record reveals that form 1093 itself is an internal Postal Service form which on its face contains nothing that pertains to the FAA. Moreover, the FAA has provided us with a copy of the form 1093 it completed with the Oklahoma City Post Office. The completed form 1093 contains no special instructions concerning the delivery of mail to the FAA's Aeronautical Center at 6500 South MacArthur Boulevard.

We deny DPER's protest.

*for* *Milton J. Aorolan*  
Comptroller General  
of the United States