

DECISION

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

FILE: B-219618 **DATE:** November 8, 1985
MATTER OF: Stewart & Stevenson Services, Inc.

DIGEST:

Protest that agency should not have rejected protester's proposal as a late proposal is denied. Where the protester has only offered the commercial courier's receipts (which are either disclaimed by the agency official who allegedly signed them or which appear to have been altered by someone after the agency official signed them) and where other circumstances indicate that the proposal was received late, the protester has failed to carry the burden of affirmatively proving that the proposal was timely submitted.

Stewart & Stevenson Services, Inc., protests the rejection of its proposal as late under solicitation N00140-85-R-0256 issued by the Naval Regional Contracting Center (NRCC), Philadelphia, Pennsylvania, for aircraft tow tractors.

We deny the protest.

The solicitation, as amended, provided that the closing time and date set for receipt of proposals was 4 p.m. on June 3, 1985, at the issuing office or in the depository located in building 600, United States Naval Base, Philadelphia, Pennsylvania, and late offers would be subject to late proposal provisions which were incorporated into the solicitation.

The protester consigned its proposal to a commercial courier service for delivery. According to the protester, the courier attempted to deliver the proposal to NRCC between 3:50 and 4 p.m. on June 3, 1985. The courier found the customer service counter at the Bid Receipt Office in building 600 unstaffed and, therefore, unsuccessfully attempted to make delivery at the back entrance. The courier returned to the customer service counter which was by then staffed by a man who accepted the proposal, marked

033753

the courier's receipt by hand to show receipt at 4 p.m., and signed the name of the Supervisory Contract Negotiator on the commercial courier's delivery receipt. The protester argues that, since this Navy official did not time/date stamp either the proposal or the courier's delivery receipt, the handwritten time notation and signature on the commercial courier's receipt should be deemed conclusive evidence of timely delivery.

The Navy's account of the circumstances surrounding its receipt of the protester's proposal differs markedly from that offered by the protester. The Navy reports that on the morning of June 4, 1985, the day following the deadline for receipt of proposals, employees arriving for work at the Small Purchase Branch--which is separate from the Contracts Division Branch where the customer service counter is located--discovered a shipping box addressed to a specific Supervisory Contract Negotiator at building 600, NRCC, Philadelphia. The Navy further states that an opened and empty envelope was pasted on the side of the box, an airline baggage check was pasted on the top, and there were no other identifying markings to indicate the contents of the box. The named Supervisory Contract Negotiator was contacted and picked up the package at the Small Purchase Branch; upon opening the package, the NRCC official identified the contents as the protester's proposal. The Supervisory Contract Negotiator then interviewed employees in the Small Purchase Branch, the Contracts Division Branch, the mailroom, and the bid section in an unsuccessful attempt to ascertain how and when the package had been received. On June 6, 1985, the Supervisory Contract Negotiator advised the protester that the proposal could not be considered unless there was evidence that the proposal had been received in a timely manner at NRCC. On June 7, the commercial courier's agent presented the original receipt, which was purportedly signed by the Supervisory Contract Negotiator, evidencing timely delivery at 4 p.m. on June 3, 1985. This Navy official disclaimed the signature as not his own and denied any knowledge of the document. Following fruitless searches for employees who might have had any knowledge of the arrival of the proposal, and in the face of uncorroborated assertions by the commercial courier that it made timely delivery, the Navy advised the protester that its proposal was received after the time set for closing under the solicitation and, therefore, would not be considered.

The protester maintains that the individual manning the customer service desk in the Bid Receipt Office at 4 p.m. on June 3 signed the Supervisory Contract

Negotiator's name, thereby indicating that the recipient was a Navy employee as well as demonstrating that the proposal was in the possession of the Navy by the time set for receipt of proposals. Consequently, the protester asserts that only the Navy can know how the proposal was moved to the Small Purchase Branch and when it was given to the Supervisory Contract Negotiator.

The protester buttresses this view by providing a photostated document showing that the same Supervisory Contract Negotiator personally signed a second receipt on June 7, 1985, indicating that the proposal was received initially by him on June 3, 1985. Thus, the protester states that the Supervisory Contract Negotiator confirmed receipt of the protester's proposal by signing and writing "Received 6/3/85" on the second receipt. However, the Navy's copy of this same receipt retained by the Supervisory Contract Negotiator and provided for our inspection shows only the NRCC official's signature on the June 7 receipt for the proposal package. The notation "Received 6/3/85" was apparently inserted by someone else after the Supervisory Contract Negotiator had signed the receipt and been given a copy.

The Navy also reports that the protester's account of the delivery is inherently improbable as it is contrary to accepted practice for receiving proposals at the issuing activity. The Navy states that: an employee accepting a delivery at the customer service counter in the bid section would sign his or her own name and not that of the addressee or anyone else; the recipient's copy of the shipping document would be attached to the package; a package addressed to a specific Navy official would be delivered to that person, not carried to a service counter in the Small Purchase Branch and left there. The Navy also refutes the protester's assertion that the customer service desk in the bid section was unstaffed between 3:50 and 4 p.m. While a clerk is not continuously present at the desk, the Navy points out that there were several employees in the area immediately adjacent to the service desk; such employees are generally aware of someone in the area and regularly service the bid section counter. Moreover, a bell is on the customer service counter for use in summoning assistance.

The Navy speculates that the protester's commercial carrier may have entered the Small Purchase Branch after 4 p.m., or perhaps entered the building after 5 p.m. through a different unit's open entrance. However, the

Navy admits that it does not know exactly how the protester's proposal came to be discovered on the Small Purchase Branch service counter at 7:30 a.m. on June 4, 1985.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires its rejection. Priest & Fine, Inc., B-213603, Mar. 27, 1984, 84-1 C.P.D. ¶ 358; affirmed, B-213603.2, May 23, 1984, 84-1 C.P.D. ¶ 558. By choosing a method of delivery other than those specified in the late proposal clause (registered or certified mail or telegram where authorized), the offeror assumes a high degree of risk that its proposal will be rejected if untimely delivered. SysTec, Inc., B-209483, Apr. 8, 1983, 83-1 C.P.D. ¶ 374; Federal Acquisition Regulation, 48 C.F.R. § 52.215-10 (1984). Nevertheless, we have held that a late hand-carried proposal may be considered where it can be shown that wrongful government action was the sole or paramount cause of the late receipt. However, where the proposal arrives after the time set by the solicitation for receipt in the designated agency issuing office, the time of receipt at the agency itself must be established before we can consider the question of wrongful government action, Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 C.P.D. ¶ 332. In this regard, we have stated that all relevant evidence is for consideration in determining whether a hand-carried proposal was timely received. Hallcrest Systems, Inc., B-215328, Sept. 24, 1984, 84-2 C.P.D. ¶ 334.

As noted above, the record contains little more than the conflicting statements of the Navy and the protester concerning when, where, and to whom the commercial courier delivered the protester's proposal. Since there never was an official time/date stamp placed on the proposal, the only evidence offered by the protester is the commercial carrier's receipt which is totally disclaimed by the NRCC Supervisory Contract Negotiator who supposedly signed it. Furthermore, the second supposedly confirming receipt signed by the same NRCC Supervisory Contract Negotiator appears to have been altered, after it had been signed, to incorrectly reflect timely delivery of the original proposal. Where, as here, there is a conflict of fact and the protester's position is supported only by unofficial documentation that is disclaimed by the Navy official who supposedly signed the document and is self-serving, and since we have held that the receipts and records of commercial carriers are insufficient by themselves to establish

timely receipt, Qualimetrics, Inc., B-213162, supra, we conclude that the protester has failed to show that its proposal was delivered to the Navy by the time set for submission of proposals.

Accordingly, the protest is denied.

for Seymour E. Van
Harry R. Van Cleve
General Counsel