

12.11.78

DECISION



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

FILE: B-221727 **DATE:** April 7, 1986
MATTER OF: Rodale Electronics Corporation

DIGEST:

1. Protest that agency should have considered late proposal because receipt of the proposal late allegedly was due to government impropriety--the agency's omission of the zip code from the solicitation's address for delivery of hand-carried proposals--is timely filed within 10 working days of receipt of agency's denial of agency level protest.
2. Proposal delivered late by Federal Express properly was rejected where late delivery was caused by Federal Express and not the government.

Rodale Electronics Corporation (Rodale) protests the determination by the Naval Air Systems Command (NAVAIR) that Rodale's proposal, submitted in response to request for proposals (RFP) N00019-85-R-0058, could not be considered because it was late.

The protest is denied.

The RFP provided that offers would be received until 10 a.m. on December 9, 1985, and that hand-carried proposals were to be deposited in Room 478, Building JP-1, 1411 Jefferson Davis Highway, Arlington, Virginia.

By the closing time for submission of proposals on December 9, 1985, five proposals had been received in response to the RFP, all of which were hand-carried and received at the depository mentioned above. Rodale's proposal was logged in by depository personnel at 10:58 a.m. NAVAIR determined that Rodale's proposal was late and that the proposal would not be opened or considered for award. Rodale's proposal was delivered by Federal Express.

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The record indicates that delivery of Rodale's proposal package was attempted at 9:26 a.m. on Saturday, December 7, 1985, but the NAVAIR offices were closed. While Rodale's proposal was delivered late the following Monday, Rodale contends that the address for hand-carried proposals in the RFP was incomplete because there was no zip code and that this improper government action was the paramount cause of the late receipt of its proposal.

Initially, NAVAIR contends that Rodale's protest should be dismissed as untimely since the lack of a zip code was apparent on the face of the solicitation and our Bid Protest Regulations, 4 C.F.R. ¶ 21.2(a)(1) (1985), require that such protests be filed prior to the closing date for receipt of proposals.

We agree that the omission of the zip code from the hand-carried delivery address was apparent on the face of the solicitation and, thus, ordinarily Rodale would be required to protest this solicitation impropriety prior to the closing date. See 4 C.F.R. § 21.2(a)(1). However, Rodale's complaint is a broader contention that the government in this case, by omitting the zip code, provided the paramount cause of the late receipt of the offer. Thus, the filing requirements of 4 C.F.R. § 21.2(a)(1) are not applicable to this contention.

NAVAIR also argues that the protest is untimely because Rodale did not file here within 10 days of its learning of NAVAIR's denial of Rodale's agency level protest as required by 4 C.F.R. § 21.2(a)(3). Rodale filed a timely protest against rejection of its proposal as late by letter to NAVAIR dated December 18, 1985. NAVAIR denied the protest by letter dated January 9, 1986. The record does not indicate when NAVAIR's reply was received by Rodale. Even assuming Rodale received the agency letter on January 9, the day the letter apparently was dated, Rodale's protest to us filed on January 24 is timely since January 24 is 10 working days after January 9 (January 20 was a federal holiday).

An offer delivered to an agency by Federal Express or other commercial carrier is considered to be hand-carried and, if it arrives late, it can only be considered if it is shown that the paramount cause for the late receipt is some government impropriety. Motorola Inc., B-219592, July 24, 1985, 85-2 C.P.D. ¶ 84. An offer is late if it does not arrive at the office designated in the solicitation by the

time specified. Id. Here the record does not show that government impropriety was the paramount cause of the late delivery of Rodale's proposal.

Rodale's contention is that the paramount cause of the late arrival of Rodale's offer was NAVAIR's failure to include the zip code for the hand-carried depository address in the solicitation. The record indicates that Rodale prepared the shipping documents for Federal Express and that Rodale inserted the correct zip code for the NAVAIR solicitation issuing office contained in the solicitation which although located in Arlington, Virginia, has a Washington, D.C., zip code. The Federal Express documents concerning delivery submitted by Rodale show that the delay in delivery on December 9 was caused by an allegedly incorrect zip code. Apparently, because of the Washington, D.C., zip code, it was not readily apparent to the Federal Express driver that the proposal package was for delivery in Arlington, Virginia, and this contributed to the delay in delivery.

We note that the zip code given in the solicitation was correct for mailing purposes. The solicitation provided no zip code for hand-carried offers since ordinarily none would be needed. Thus, we find no impropriety in the addresses provided in the solicitation.

Under these circumstances, since the record indicates that the delay in delivery was caused by Federal Express, and not the government, we conclude that the agency properly rejected Rodale's proposal as late.

We deny the protest.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel