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DECISION



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

FILE: B-223107

DATE: June 23, 1986

MATTER OF: Trimmer Marina

DIGEST:

Agency personnel lack authority to accept a late proposal unless wrongful government action is the paramount cause of the late receipt.

Trimmer Marina protests the rejection of its late proposal under request for proposals No. DACW05-86-R-0026, issued by the United States Army Corps of Engineers. The solicitation is for the lease of a marina on government property at Pine Flat Lake, near Sanger, California.

Proposals were due at 3 p.m. on April 23, 1986 at the office of the Corps of Engineers in Sacramento, California. Representatives of the protester arrived shortly after 3 p.m. to submit a proposal and were initially told that the proposal was late and could not be accepted. The protester asked an agency contracting official if he would accept the late proposal, and the official told the protester to take it to the Real Estate Division, where a timely proposal had already been taken. The Real Estate Division accepted and opened the proposal. The Corps subsequently determined that the proposal was late and returned it to the offeror. The Corps denied Trimmer Marina's protest to it, and this protest followed.

It is not clear from the record that the lease at issue here falls within our jurisdiction under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(1) (Supp. II 1984), to consider protests regarding "the procurement of property or services" by a federal agency, and we do not otherwise consider protests involving sale or lease of government property absent a written agreement with the agency for us to do so. 4 C.F.R. § 21.11 (1986); William Ernest, B-220400, Nov. 1, 1985, 85-2 CPD ¶ 507. In this case, there are procurement aspects to the lease, since the lessor is required to improve the property, apparently including permanent facilities such as a sewage line. Regardless of the jurisdictional aspects, however, we dismiss the protest because it does not set forth valid grounds for protest as required by 4 C.F.R. § 21.3(f).

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A late, hand-carried proposal may only be considered where wrongful government action was the paramount cause of the late receipt. Dale Woods, B-209459, Apr. 13, 1983, 83-1 CPD ¶ 396. In this case, the protester arrived at the office designated in the solicitation after 3 p.m., the time for submission of proposals. The proposal was late, and officials in the Real Estate Division lacked the authority to accept the proposal for the government. Radva Corp., B-219595, July 26, 1985, 85-2 CPD ¶ 101; Edward E. Mundy Trucking and Lumber Co., B-212277, Aug. 8, 1983, 83-2 CPD ¶ 183. Offerors have responsibility for the timely delivery of proposals and risk rejection if they do not comply with the exact provisions of a solicitation. The fact that the late proposal was opened prior to its return does not negate the rule that it must be rejected. See Larry Carlson and Associates, Inc., B-211918, Nov. 21, 1983, 83-2 CPD ¶ 599.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel