



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: High Vacuum Equipment Corporation

File: B-224511

Date: August 15, 1986

DIGEST

Late hand-carried proposals may not be considered where there is no showing that wrongful government action was the paramount cause of lateness. A proposal that admittedly was late due to delays in a flight from the city where the protester's office is located to where the procuring activity is located therefore was properly rejected.

DECISION

High Vacuum Equipment Corporation protests the rejection of its admittedly late proposal under solicitation No. F30602-86-R-0198, issued by the Rome Air Development Center. The solicitation is for a cryogenic (low temperature) facility for testing optical lenses. High Vacuum asks that its proposal be considered because the cause of the lateness was beyond its control.

The protester states that time set for closing was 3 p.m. on July 25, 1986. The protester hand-carried its proposal to Griffis Air Force Base, New York, but did not arrive until approximately 4 p.m. due to delays in a flight from Boston. After arriving at the facility, the protester's representative obtained directions to the buyer's residence and delivered the 12-volume proposal to him at approximately 5 p.m.

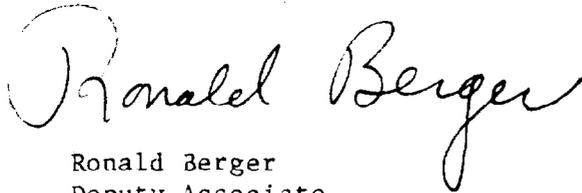
Late delivery of a bid or proposal generally requires rejection. See Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.304-1, 15.412 (1985). A bid or proposal bid that is hand-carried and arrives late cannot be considered unless the protester can show that the paramount cause for delay was wrongful government action. National Minority Research Development Corp., B-220057, Sept. 18, 1985, 85-2 CPD ¶ 303.

We realize that the delayed flight in this case was beyond the protester's control, but the FAR clause that permits consideration of late proposals only applies to those sent by mail or telegram (if

authorized) unless the proposal is the only one received. We have held that if an offeror chooses to hand-carry a proposal, rather than to use methods specified in the late proposal clause, and a delay occurs, the risk of delay must be borne by the offeror and the proposal is not eligible for consideration even if the cause of delay was beyond the offeror's control. For example, we upheld the rule in a case where the protester was delayed due to a roadblock set up to divert traffic from an area subject to sniper fire. Data Pathing Inc., B-188234, May 5, 1977, 77-1 CPD ¶ 311. We also applied the rule in the case where the protester was on the way to deliver a proposal but was involved in an automobile accident and therefore arrived late with the proposal. National Minority Research Development Corp., supra.

Application of this rule, although it sometimes appears harsh, is required to protect the integrity of the procurement system and to make sure that all offerors are treated equally. We find no basis to excuse the lateness of High Vacuum's proposal, which, since there was no wrongful government action, the Air Force properly rejected.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name and title.

Ronald Berger
Deputy Associate
General Counsel