



The Comptroller General
of the United States

Washington, D.C. 20548

P.Willems

Decision

Matter of: Work System Design, Inc.

File: B-223942

Date: November 26, 1986

DIGEST

Late offer sent by commercial carrier, who left it with other freight at building loading dock instead of delivering it to the room number shown in the address, may not be considered because the protester has not shown that the paramount cause for the late receipt was some improper government action.

DECISION

Work System Design, Inc. (WSD), protests the rejection of its proposal as late under request for proposals (RFP) No. N00030-87-R-0054, issued by the Strategic Systems Program Office, Department of the Navy. The solicitation is for the management of the Strategic Weapons System, Second Level Maintenance Shop at the Strategic Weapons Facility in Georgia.

We deny the protest.

The RFP, as amended, provided that proposals were due at 2:00 p.m. on Friday, August 1, 1986, at the location specified in the hand carried offers provision; or, if hand carried, in the depository located in Room 1002, Building No. 3, Crystal Mall Complex (CM#3), 1931 Jefferson Davis Highway, Arlington, Virginia.

The record indicates that WSD sent its offer by United Parcel Service (UPS) to the address indicated in the "Hand-Carried Offers" clause of the solicitation, which was also the address for mailed offers, and that the parcel arrived at the loading dock at CM#3 sometime between 9:00 and 9:30 a.m. on Friday, August 1. Although the proposal was received at the loading dock on time, it was deposited in the agency's internal mail system and was not received by the contracting officer until 8:30 a.m. on Monday, August 4. The Navy

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determined that WSD's proposal was late under the terms of the solicitation and that the proposal would not be opened or considered for award.

The protester challenges the rejection of its proposal as late. According to WSD, its offer was delivered 4 hours and 45 minutes prior to the deadline for receipt of proposals and the failure of the proposal to arrive on time at the opening room was due to the mishandling of it by the government after receipt at the government installation "and/or as a result of inadequate proposal delivery instructions" in the solicitation.

Our Office has consistently held that it is the responsibility of the offeror to deliver its proposal to the proper place at the proper time and must bear the responsibility for its timely arrival unless specific conditions required for delivery are met. See Discovery International, Inc., B-219664.2, Nov. 19, 1985, 85-2 C.P.D. ¶ 565. The standard solicitation clause that permits consideration of late submissions, which was incorporated into the solicitation by item 9 of the solicitation, applies to only those sent by mail or telegram, if authorized, unless the proposal is the only one received. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-10. We have held that where an offeror chooses to hand deliver a proposal rather than use a method of delivery specified in the late proposal clause, the offeror assumes the risk that its proposal will not be considered if a delay in delivery does occur. Stewart & Stevenson Services, Inc., B-219618, Nov. 8, 1985, 85-2 C.P.D. ¶ 531 at 4. An offer delivered to an agency by commercial carrier is considered to be hand carried, and if it arrives late it can only be considered if it is shown that wrongful government action was the sole or paramount cause of the late receipt. Nanco Labs, Inc., B-220663; B-220664, Nov. 27, 1985, 85-2 C.P.D. ¶ 613 at 2, affirmed on reconsideration, Jan. 15, 1986, 86-1 C.P.D. ¶ 48.

We cannot conclude that improper government action was the paramount reason that WSD was unable to submit its proposal on time. It is not disputed that the offer was addressed in accordance with the solicitation instructions and was sent by UPS, a commercial carrier. According to the Navy, WSD's offer was "dumped on the loading dock by the UPS driver along with several other packages" on August 1 sometime between 9:00 a.m. and 9:30 a.m. Although the protester alleges that UPS was "not allowed" to deliver its proposal to the designated office and had to "depend on" a government employee to comply with the "well posted delivery instructions," it has provided no evidence in support of these assertions.

The Navy, through affidavits of the loading dock clerk and the contract specialist, disputes WSD's version of the facts and maintains that at no time did the UPS driver give any special instructions regarding delivery to the loading dock clerk nor request access to the building in order to personally deliver the package. Moreover, the contract specialist asserts that at no time did WSD or UPS contact her for delivery instructions or to indicate any problems were being encountered with the delivery of WSD's proposal. The Navy further states that after receipt of the parcel by the loading dock clerk, the proposal was deposited in the agency's internal mail system and was not received at the office designated in the solicitation until the next workday.^{1/}

In this case, the place designated for receipt of hand carried proposals was Room 1002 of CM#3 and WSD's proposal was not received in that room on time. It is apparent from the record that the protester, through its carrier, was not precluded from effecting personal delivery to the designated office. Rather, the paramount cause of the late receipt was the improper use of the loading dock by UPS rather than any improper government action. See Chemical Waste Management, Inc., B-215382, Sept. 10, 1984, 84-2 C.P.D. ¶ 274 (proposal left on loading dock by carrier instead of delivered to room number specified).

The protester also contends that the late receipt of its proposal was attributable to the inadequate delivery instructions contained in the solicitation. WSD argues that the RFP lists "two separate places" where offers would be received: the hand carried depository address and the "place"

1/ The Navy advises that most of building CM#3 is occupied not by the procuring activity (known as SSPO), but by the Naval Supply Systems Command (NAVSUP), whose loading dock is operated by a contractor. Although the NAVSUP loading dock accepts freight addressed to SSPO, all of it is forwarded to SSPO's Services Department because SSPO freight usually consists of paper products used by that department. When the protester's parcel was received by SSPO's Services Department, it was placed in the inter-office mail and delivered on the next scheduled run to the Contracts Branch, where it was received after the time set for receipt of proposals. While the protester argues that those who handled its parcel should have been more alert to the labels on it which "signaled its nature and urgency," the fact of the matter is that the deposit of the parcel on the loading dock placed it in the hands of those who do not customarily receive and process offerors' proposals.

specified for other types of deliveries. Further, in its view, the handcarried address was deficient in that it did not include a zip code or an office title.

Initially, the agency responds that this protest ground is untimely and should be dismissed since any alleged deficiencies in the delivery instructions should have been apparent from the face of the solicitation and our regulations require that protests, such as this, be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1986).

We agree that the omission of the zip code and office title from the handcarried delivery address was apparent from the face of the solicitation and if WSD considered this a deficiency it would therefore be required to raise that issue prior to the closing date for receipt of proposals. Id. Nevertheless, we believe that the emphasis of WSD's protest is that this omission by the government contributed to the late receipt of its offer; therefore, our filing requirements do not apply to this contention. See Rodale Electronics Corp., B-221727, Apr. 7, 1986, 86-1 C.P.D. ¶ 342.

With regard to the merits of this contention, the Navy argues that WSD's failure to deliver its proposal on time was not attributable to the RFP's delivery instructions. The Navy states that, as specified in the solicitation, the handcarried address was the address intended for all forms of delivery including those made by commercial carriers. The agency points out that WSD's proposal was properly addressed in accordance with the handcarried offers provision and since it was sent by commercial carrier, i.e., handcarried, the place designated for receipt was the depository located in Room 1002, CM #3 and not the loading dock.

As set forth above, we have consistently held that offers sent by commercial carriers are considered to be handcarried and therefore an offeror has the responsibility to assure timely arrival of its proposal at the place designated for receipt of handcarried proposals. In this case, the protester's courier simply did not attempt to deliver the proposal to the place specified in the RFP. We therefore cannot conclude that the omission of a zip code or office title from the handcarried address was a paramount cause of the late receipt.

Finally, the protester urges consideration of his late proposal on the grounds that he believes that consideration of its proposal would result in an advantage to the government. WSD states that consideration of its proposal would not impair the integrity of the procurement system since it "released control of its offer twenty-four hours prior to closing time."

Since we find that the government did not contribute to nor was the paramount cause for the late delivery, WSD's proposal's was properly rejected despite the protester's allegation that it may be more advantageous than those timely received. In our view, the maintenance of confidence in the integrity of the procurement system as a whole is of greater importance than any possible advantage to be gained by considering a late proposal or modification in a particular procurement. Discovery International, Inc., B-219664.2,
supra

Accordingly, the protest is denied.

Harry R. Van Cleve
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General Counsel