



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Siemens Hearing Instruments, Inc.  
File: B-225548  
Date: December 30, 1986

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### DIGEST

Late proposal sent by commercial carrier may not be considered when the paramount cause of lateness is delay by the carrier, not related to improper government handling.

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### DECISION

Siemens Hearing Instruments, Inc. protests the rejection of its proposal for hearing aids as late under Veterans Administration (VA) solicitation No. M1-Q9-87. Offers were due by Friday, November 28, 1986, at 4 p.m. Siemens states it prepared the proposal and sent it to the VA Marketing Center in Hines, Illinois on November 26 via a commercial overnight carrier. However, it did not arrive at the location specified in the solicitation until Monday, December 1, at 10:05 a.m., when the contracting officer rejected it.

We dismiss the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1986), because it is apparent on the face of the protest that it is without merit.

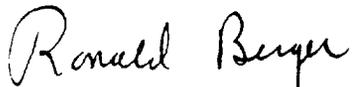
An offeror is responsible for the timely delivery of its proposal. Jack Burney, B-218426, Apr. 2, 1985, 85-1 CPD ¶ 468. A late hand-carried proposal--which includes one sent by commercial carrier--can only be accepted if the paramount cause for late delivery is improper government action. Motorola Inc., B-219592, July 24, 1985, 85-2 CPD ¶ 84. The exception does not apply in this case, where the lateness is admittedly the fault of the carrier.

The protester argues that because this is a negotiated procurement, and the VA will not begin testing samples until January 1987, the lateness of its proposal will not affect the outcome of the procurement and, therefore, should be excused. The Federal Acquisition Regulation, however, treats late proposals in the same manner as it treats late bids, see 48 C.F.R. §§ 15.412, 14.304 (1985), and neither properly may be considered for award under the circumstances here.

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Furthermore, while application of the late proposal clause sometimes may seem harsh, the government must protect the integrity of the procurement process by assuring equality of treatment for all offerors. The late proposal rule simply prevents one offeror from obtaining an unfair advantage over a competitor that might accrue because that offeror is permitted to submit a proposal later than the deadline established for all competitors. See, e.g., Real Fresh, Inc., B-204604, Dec. 31, 1981, 81-2 CPD ¶ 522; Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD ¶ 366; Data Pathing Inc., B-188234, May 5, 1977, 77-1 CPD ¶ 311.

We therefore find that the VA properly rejected the proposal. The protest is dismissed.



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