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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Silvics, Inc.
File: B-225299
Date: February 24, 1987

DIGEST

Normal delay in forwarding carrier-delivered offer from mailroom to office designated for receipt, with result that offer was not received by required time, does not warrant considering the late offer where the delivery was not expedited because the carrier's envelope was not marked with information as to the solicitation number, deadline for receipt, and ultimate destination of the proposal.

DECISION

Silvics, Inc., protests the determination by the Forest Service that Silvics' proposal, submitted in response to request for proposals (RFP) No. R6-86-225N for reforestation on lands in the Pacific Northwest region, could not be considered because it was late.

We deny the protest.

The closing date for receipt of proposals was November 5, 1986, at 11 a.m. The RFP required that hand-carried offers be received in room G07 of the Forest Service building. Silvics' offer, sent by Federal Express, was rejected as late because the contracting officer, who received the proposal that day through the Forest Service's internal mail-handling system, noted the offer was time/date stamped at 11:24 a.m. Silvics protests that the records of its delivery agent, Federal Express, indicate that the actual time of delivery to the Forest Service mailroom was 9:37 a.m. Silvics contends that the proposal therefore was late due to faulty agency procedures and government mishandling after receipt.

An offer is late if it does not arrive at the office designated in the solicitation by the time specified. Equitec Properties Co., B-224317, Sept. 19, 1986, 86-2 C.P.D. ¶ 327. An offer delivered to an agency by Federal

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Express or other commercial carrier is considered to be hand-carried and, if it arrives late, can only be considered if it is shown that the sole or paramount cause for the late receipt was some government impropriety. Rodale Electronics Corp., B-221727, Apr. 7, 1986, 86-1 C.P.D. ¶ 342. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Econ, Inc., B-222577, July 28, 1986, 86-2 C.P.D. ¶ 119. A late proposal should not be considered, however, if the offeror (or its agent) significantly contributed to the late receipt by not acting reasonably in fulfilling the firm's responsibility to insure delivery to the proper place by the proper time. Id; Rodale Electronics Corp., B-221727, supra.

Initially, we note the parties dispute the actual time of receipt of the offer by the Forest Service. The agency states that it has no record of its own as to the precise time Federal Express delivered Silvics' proposal to the Forest Service mailroom beyond the time/date stamp on the inner envelope of the proposal package. The Forest Service asserts that since the Federal Express outer envelope did not identify the contents as a proposal, the package was not time/date stamped until 11:24, when a clerk opened the Federal Express envelope and noted that the inner envelope was identified as a proposal. The proposal was then delivered to the contracting officer before the next scheduled mail run. The protester responds that the Federal Express log contains the signature of a Forest Service employee and the time of delivery recorded as 9:37 a.m. (The log has deliveries recorded sequentially: the preceding entry is 9:35 a.m., and the subsequent entry is 9:41 a.m.)

We need not resolve the issue, however. The reason is that even if we were to accept the Federal Express log as accurate, we do not find that the Forest Service's delay in forwarding the package from the mailroom to its ultimate destination was the sole cause of the late receipt.

An offer received at the designated place after it was due is considered late even if it was received by the agency by the time specified but at some location other than the required one--such as a mailroom--if the offeror did not allow sufficient time for the proposal to pass through any intermediate stops and reach the designated office on time. Systems for Business, B-224409, Aug. 6, 1986, 86-2 C.P.D. ¶ 164.

When a proposal is placed in an envelope provided by a commercial carrier for overnight delivery, the required information as to the solicitation number, deadline for receipt and ultimate destination may no longer be apparent from the outside envelope. Unless the outside envelope is clearly marked with all this information--and Silvics does not allege that its Federal Express envelope was--the offeror generally is considered to have contributed to any delay in delivery. Systems for Business, B-224409, supra.

The Forest Service reports that its mailroom procedures require prompt delivery of courier-received mail which, the agency explains, means that delivery is not delayed until the next normal mail run. Also, if a courier-delivered package is identified as a bid or proposal on the wrapper, it is time/date stamped upon receipt in the mailroom; otherwise, mail is time/date stamped when it is opened in the ordinary course of business. We see nothing wrong with these procedures, and it is apparent from the record that, assuming Silvics' offer was received in the mailroom at 9:37 a.m., it would have been delivered before 11 a.m. if the outside envelope had been appropriately marked. We therefore cannot conclude that the Forest Service was responsible for the fact that Silvics' proposal, delivered to the agency mailroom instead of to room G07 as required, did not reach the contracting officer by the 11 a.m. deadline.

Silvics further asserts that the late acceptance of its proposal would not prejudice any competitors since this was not a sealed bid solicitation where bids were to be opened publicly and award was to be made to the lowest bidder.

The reason for the late proposal rules, however, is that the manner in which the government conducts its procurements must be subject to clearly defined standards that apply equally to all so that fair and impartial treatment is ensured. There must be a time after which offers generally may not be received. To permit one offeror to deliver its proposal after the closing time inevitably would lead to confusion and unequal treatment of offerors and thereby would tend to subvert the competitive system. While we realize that by application of its late proposal rules the government at times may lose the benefit of proposals that offer terms more advantageous than those received timely, maintaining confidence in

the competitive system is of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. Equitec Properties Co., B-224317, supra.

The protest is denied.

for Seymour S. Gross
Harry R. Van Cleve
General Counsel