

Eurhard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G.E. American Communications, Inc.

File: B-234853

Date: May 26, 1989

DIGEST

Protest against the rejection of a hand-carried proposal received after the time that offers were due is denied where the actions of the protester and its agent were the paramount cause of the late submission of the proposal, rather than any improper government action.

DECISION

G.E. American Communications, Inc., protests the rejection of its proposal as late under request for proposals (RFP) No. MDA904-89-R-7171, issued by the Maryland Procurement Office (MPO) for domestic satellite service. G.E. argues that its proposal was delivered to the address specified in the solicitation prior to the closing, and, alternatively, that any late receipt was caused by MPO's failure to deliver the proposal to the contracting officer after it was received at the MPO central receiving room.

We deny the protest.

The RFP, issued January 27, 1989, established February 27, 3:30 p.m., as the closing date and time for receipt of proposals. With respect to hand-carried offers, including those sent by commercial carrier, the RFP instructed offerors as follows:

"[P]roposals . . . must be sealed and delivered to an employee of the Maryland Procurement Office at the following address by the date and time specified in Block 9 of the attached SF 33:

Maryland Procurement Office
ATTN: L4 61 (GPP)
9800 Savage Road
Fort George G. Meade, MD 20755-6000

045611/138793

Upon arrival at Gatehouse #2B, call Greg Prestel on extension 688-8351."

G.E. elected to use two couriers, Federal Express and Airborne Express, to deliver two copies of its proposal. The Federal Express airbill was addressed in the following manner:

"Greg Prestel (301) 688-8351
Maryland Procurement Ofc. Attn: L 461 (GPP)
9800 Savage Road
Ft. George G. Meade MD 20755-6000"

The Airborne Express airbill was similarly addressed.

The protester states that "in view of the fact that the instructions on [its] airbills indicated that Mr. Prestel was the addressee . . . and gave his telephone number, [G.E.] did not add the instruction that these were to be delivered to Gatehouse #2B." Both Federal Express and Airborne Express delivered the proposal to the agency's central receiving room, via Gatehouse 10. The agency states that this is the procedure couriers generally follow in the absence of instructions to deliver to a particular gatehouse, although there is no formal agreement between any of the couriers and the agency to that effect.

MPO does not dispute that the proposals were received at the central receiving room on February 27, approximately 4 hours before the closing time for receipt of offers. The agency reports, however, that the packages were mistakenly sent to another building and received there on March 2 before being forwarded to Mr. Prestel on March 3. Two other firms submitted offers which were timely delivered by Federal Express to Gatehouse #2B in accordance with the instructions contained in the RFP. The contracting officer notified G.E. on March 3 that its proposal was late and that it would therefore not be considered. This protest followed.

G.E. argues that both copies of its proposal were addressed correctly and properly delivered to an employee at 9800 Savage Road.^{1/} The protester contends that the instruction to call Greg Prestel upon arrival at Gatehouse #2B was ambiguous because it could be equally understood as an internal instruction directed at agency employees to

^{1/} In a supplemental submission, the agency states that the address of the central receiving room is not 9800 Savage Road, but 9705 Sanford Road.

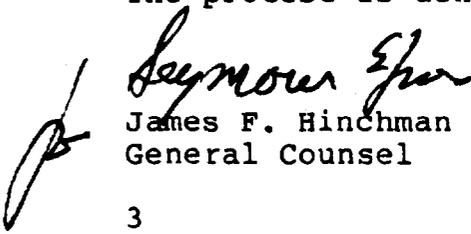
deliver packages to this gatehouse and to call Mr. Prestel. We find this argument to be without merit.

An offer is late if it does not arrive at the office designated in the solicitation by the time specified. Eagle International, Inc., B-229922, March 1, 1988, 88-1 CPD ¶ 214. In our view, the instruction printed beneath the MPO address sufficiently indicated that hand-carried proposals were to be delivered to Gatehouse #2B, and, upon arrival, the designated individual was to be called. We note that G.E.'s own airbills were addressed to Greg Prestel, whose name was not specifically listed in the RFP's address block, which suggests that G.E. knew that the RFP contemplated delivery by arrangement with Greg Prestel, rather than to the agency receiving room. Thus, we do not think that G.E. can now reasonably argue that it did not understand that the solicitation provision, designating the individual and the gatehouse, constituted specific delivery instructions as opposed to internal agency instructions. Accordingly, we conclude that the RFP required couriers to deliver proposals to Gatehouse #2B and to call the telephone number provided.

G.E. also argues that the failure of the agency employees in the central receiving room to deliver the packages to Greg Prestel was the paramount cause of the late receipt of its proposal.

A late proposal sent by commercial carrier can only be considered of if the paramount cause of the late receipt was some improper government action. See G.M. Coen & Assocs., Inc., B-225554, Feb. 12, 1987, 87-1 CPD ¶ 156. We merely note that contrary to the express instructions in the RFP, G.E. did not mark the envelopes used in submitting copies of its proposal with the solicitation number and date and time set forth for receipt of proposals. Thus, there was simply no way for the central receiving room personnel to identify the contents as a proposal that had to be delivered to a certain place by a certain time. See MAPA Pioneer Corp., B-231517, Sept. 13, 1988, 88-2 CPD ¶ 232. We conclude that the errors committed by G.E. and its agent--not the failure of the MPO mail system to deliver the envelope in 4 hours--were the paramount cause for late receipt of the proposal. Accordingly, G.E.'s offer was properly rejected as late.

The protest is denied.


James F. Hinchman
General Counsel