



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: R & J Manufacturing Co.

File: B-235305

Date: August 18, 1989

DIGEST

Protester's offer was properly found late where sent by certified mail only 1 day before closing but received after closing and where no evidence exists to show that agency received telefaxed copy of offer allegedly transmitted prior to closing.

DECISION

R & J Manufacturing Co. protests the award of a contract to any other offeror under request for proposals (RFP) No. DAAA09-89-R-0249, issued by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM) for headspace gages to be used on the M249 machine gun. R & J's offer, sent by certified mail, was received 3 days after the closing date and was not opened because it was not at least mailed 5 days prior to the closing date for receipt of offers.

The protest is denied.

R & J contends that its offer was sent by telefacsimile machine on March 22, 1989, at approximately 9 a.m., with a copy sent by certified mail on March 23. Although the closing date was March 24, and R & J's mailed offer was not received until March 27, R & J contends that its telefaxed offer should have been received at the contracting activity on March 23 and should have been accepted. The Army states that it never received the telefaxed copy of R & J's proposal. Accordingly, it rejected R & J's mailed offer, the only one in its possession, as being late.

R & J states that the mailed copy of its offer which arrived late at AMCCOM, and which has not been opened, is marked "copy faxed 3/22/89, 9:30." R & J also produced a copy of its telephone records to show that its telefax

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machine was in communication with AMCCOM's telefax machine at 8:50 a.m., on March 22 for 4 minutes. R & J argues that AMCCOM must therefore have received but misplaced its telefaxed offer, and that its mailed offer and its telephone bill prove this assertion.

AMCCOM states that its facsimile log shows no record of any facsimile transmission from R & J on March 22. AMCCOM's header file (a file of the first page of faxed messages) also shows no record of R & J's transmission. AMCCOM states that there is no evidence that it received whatever R & J transmitted on March 22, nor is there evidence as to what R & J transmitted or indeed if it was four blank pages which were transmitted.

In its comments on the Army's report, R & J submits two letters from the manufacturers' representatives of both R & J's and AMCCOM's telefax machines. R & J states that these letters show that both machines are considered reliable and dependable, that AMCCOM's machine produces automatic status reports of messages sent, and that it is unlikely that a transmission period of 4 minutes would have occurred without any error message being shown or printed by either machine or without data being transmitted or received. R & J states that the status reports of AMCCOM's telefax machine should be consulted to determine that R & J's telefax was received.

The RFP contained the Federal Acquisition Regulation (FAR) clause concerning late submissions, modifications, and withdrawals of proposals, FAR § 52.215-10 (FAC 84-17), which states:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it

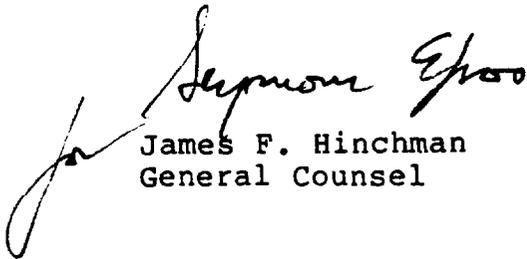
(1) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers

(2) was sent by mail . . . and it is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation; or

(3) is the only proposal received."

Under the clause, R & J's mailed copy of its offer, received after closing, was properly rejected as late because it was mailed only 1 day prior to closing. With respect to the telefaxed copy of R & J's offer, there is no evidence that this copy was received by the agency. R & J's telephone bill does not establish an actual transmission occurred or what was transmitted, and the agency's records do not show any evidence of receipt of R & J's proposal. Moreover, the fact that the mailed copy of R & J's offer contains R & J's notation that a copy of the offer was previously telefaxed to AMCCOM prior to closing does not show that AMCCOM actually received the offer. Accordingly, there simply is no basis for concluding that the agency timely received an offer from R & J.

The protest is denied.



James F. Hinchman
General Counsel