



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: United Teleplex

File: B-237160.2

Date: February 2, 1990

Bob Humphries, Teleplex United, for the protester.
Sophia L. Rafatjah, Esq., Office of General Counsel,
Department of the Army, for the agency.
Steve Gary, Esq., and John Melody, Esq., participated in the
preparation of the decision.

DIGEST

Where solicitation incorrectly indicated place for delivery of hand-carried proposals, and agency personnel then misdirected offeror when it attempted delivery of its proposal, government action was the paramount cause of a hand-carried proposal's being submitted several minutes after the time specified in the solicitation for receipt of proposals; lateness therefore properly may be waived and the proposal accepted for award.

DECISION

United Teleplex protests the award of a contract to Videophile, Inc., under request for proposals (RFP) No. DADA 03-89R-0029, issued by the Department of the Army for installation and maintenance of a data communications system at Fitzsimons Army Medical Center. United objects that since Videophile's hand-carried proposal was submitted after the time set for the submission of proposals, the Army was required to exclude the proposal from consideration for award.

We deny the protest.

The solicitation specified that offers were to be submitted by 3 p.m. on August 7, 1989, and that any proposal received at the office designated in the solicitation after the exact time specified would not be considered. Although the RFP further stated that, if hand-carried, offers were to be

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submitted at the depository located on the first floor of Building T-205 of the Medical Center, no such depository existed. According to the Army, Videophile's representative entered the building prior to 3 p.m. and, in the absence of a depository or any signs indicating where offers should be deposited, attempted to deliver the proposal to the secretary for the director of the contracting division. The proposal was not in a sealed envelope and the secretary, in the mistaken belief that an offer must be in a sealed envelope to be accepted and time-stamped in, directed the individual upstairs to the Support Services Division to obtain an envelope. After obtaining an envelope, again from an individual who did not time-stamp in the proposal, the Videophile representative found the Contracting Division office and presented the proposal to the contract specialist, who accepted the proposal a few minutes after 3 p.m. and advised the individual that it would be considered late pending an investigation. On the same day, the contracting officer investigated the matter and determined that the proposal was late only by virtue of improper government action and should be considered timely.

As a general rule, it is the responsibility of the bidder to deliver its offer to the proper place at the proper time, and the late delivery of an offer requires its rejection. Richards Painting Co., B-232678, Jan. 25, 1989, 89-1 CPD ¶ 76.1/ Our cases provide for limited exception to this rule, however, under which a late hand-carried offer may be considered where the paramount cause of the late receipt is improper action on the part of the government, and where consideration of the late offer would not compromise the integrity of the competitive procurement system. Id. These cases require affirmative government action that makes timely delivery of the hand-carried offer impossible. Id. Such improper government action may be misdirection caused by government personnel, solicitation instructions, or building signs. See Baeten Constr. Co., B-210681, Aug. 12, 1983, 83-2 CPD ¶ 203. Thus, we have found that the contracting agency properly considered a late bid because the misdirection of the bidder by the contracting officer's representative, a procurement assistant, was the paramount cause of the late submission of the bid; that is, but for the misdirection, the bid would have been submitted on time. Id. However, a misdirected late proposal may be considered

1/ We reversed our decision on grounds of a mistake in facts that is irrelevant to the present case. See Richards Painting Co.--Reconsideration, B-232678.2, May 19, 1989, 89-1 CPD ¶ 481.

only if the offeror did not significantly contribute to the lateness. See Geiger Co., B-216502, Feb. 7, 1985, 85-1 CPD ¶ 155.

Based on the Army's account of the facts, we think it is clear that the Army's actions were the paramount cause of the lateness of Videophile's proposal, and that the lateness therefore was waivable. The improper government action consisted, in the first instance, of including incorrect information in the solicitation to the effect that a depository for the receipt of proposals would be found on the first floor of Building T-205, where none in fact existed. As a result, Videophile's representative, upon arrival in the building, had no way to determine where he should submit the firm's proposal. When the representative then attempted delivery of the proposal to the Contracting Division director's office--in the absence of a depository or signs indicating some other office for proposal submission--the director's secretary, instead of merely directing him to the Contracting Division where he could submit the proposal, caused a further delay by advising the firm's representative to obtain an envelope. We find that, but for these actions, the proposal would have been submitted on time. Richards Painting Co., B-232678, supra; Baeten Constr. Co., B-210681, supra.

United takes issue with the facts as reported by the Army. United states that its director of network services witnessed a representative of Videophile arrive at Building T-205 to submit that firm's proposal at 3:03 p.m., 3 minutes after the time designated for the submission of offers; United asserts that it had good reason to note the time of Videophile's arrival, since it was directly involved in the competition, and that its own recollection of that time should be accorded more weight than the agency's contrary statements.

We disagree. United's statement as to the time of Videophile's arrival was made well after the fact, after award already had been made to a competitor, and in support of its protest. The secretary's statement, on the other hand, signed on August 7, was contemporaneous with the events in question and specifically certifies that the Videophile representative carrying the proposal arrived prior to 3 p.m., and that the documents were not clocked in at the time of his arrival because it was "necessary" to direct him upstairs to obtain an envelope. This statement was signed before the outcome of the competition was known, and also is supported by the signed statements of two other officials in the Contracting Division. In these circumstances, we find no basis for discounting the facts as reported by the Army.

United asserts that Videophile significantly contributed to the lateness of its proposal, and that any agency misdirection therefore does not warrant waiving the lateness of the proposal, see Geiger Co., B-216502, supra, because, as the incumbent contractor, Videophile should have known there was no depository in the building, and should have been able to find the proper location for submitting proposals on its own. We disagree. The Army advises in this regard that, after Videophile was awarded the prior contract, the Contracting Division was reorganized, and that Videophile thus would have no way of knowing, given the absence of signs, where proposals were to be submitted.

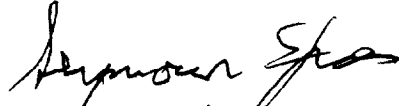
United also argues that Videophile contributed to the lateness of its proposal by failing to seal the proposal in an envelope. According to the protester, since the solicitation specified that all offers were required to be sealed, the secretary was correct in refusing to accept the proposal; any lateness caused by Videophile's need to find an envelope therefore was due to its own negligence, not to any improper action on the part of the government.

Again, we disagree. We have held that a contracting officer generally may accept a hand-carried offer that is unsealed, rather than in a sealed envelope as provided by the solicitation, where circumstances surrounding the submission of the offer demonstrate that other offerors were not prejudiced, the situation here. See generally Hale Bldg. Co., Inc., B-210848, June 28, 1983, 83-2 CPD ¶ 36, citing Ryan-Walsh Stevedoring Co., Inc., B-182039, Mar. 5, 1975, 75-1 CPD ¶ 129 (unsealed bid). Thus, while Videophile did not comply with the solicitation provision specifying that offers be sealed, its offer was in an acceptable form when first presented to the Army prior to the deadline, without the envelope. Thus, the division director's secretary did in fact misdirect Videophile's representative by advising him to obtain an envelope before submitting the firm's bid in the Contracting Division.

We conclude that the government's actions were the paramount cause of Videophile's proposal's lateness by virtue of the incorrect indication in the RFP of where proposals were to be submitted, and the incorrect advice and misdirection to

Videophile concerning the submission of its proposal. Accordingly, the Army properly accepted Videophile's proposal.

The protest is denied.


James F. Hinchman
General Counsel