



Comptroller General
of the United States

Washington, D.C. 20548

147005

Decision

Matter of: Harvard School of Public Health

File: B-249177

Date: June 30, 1992

DECISION

Harvard School of Public Health protests the rejection of its late proposal under request for proposals (RFP) No. 282-92-0055, issued by the Department of Health and Human Services (HHS).

We dismiss the protest.

The RFP established 3 p.m. on June 15, 1992 as the deadline for receipt of proposals. Harvard arranged to have its proposal picked up by Federal Express on Saturday, June 13 for delivery on the morning of June 15. Federal Express, however, did not pick up the proposal until June 15; as a result, it arrived at the agency on June 16, a day late. HHS rejected the proposal, explaining to Harvard that the solicitation provided for the rejection of late proposals. Harvard thereupon filed this protest of the rejection on the basis that the lateness was not Harvard's fault.

Delivery of a proposal to the proper place at the proper time is the responsibility of the offeror. Nanco Labs Inc., B-220663; B-220664, Nov. 27, 1985, 85-2 CPD ¶ 613. This is true even if the proposal is delivered by a commercial carrier, since the carrier acts as the agent of the offeror. Id. Accordingly, a proposal delivered late by a commercial carrier can only be considered if the late delivery was primarily caused by improper government action. Id. Since the paramount cause of the late delivery here was the failure of the commercial carrier to make timely delivery, rather than any improper action by the agency, Harvard's proposal properly was rejected. See Spandex USA, B-243629, Apr. 23, 1991, 91-1 CPD ¶ 403.¹

¹Although the Federal Acquisition Regulation (FAR) specifically permits consideration of late proposals in certain limited circumstances, this applies only where, unlike here, a proposal was sent by the U.S. Postal Service, telegram or facsimile, or is the only one received. FAR § 52.215-10.

We recognize that the late delivery was beyond Harvard's immediate control. Nevertheless, while application of the rule in some cases may seem harsh, it is required by the need to treat all offerors fairly and equally and to maintain the integrity of the competitive procurement system, National Minority Research Dev. Corp., B-220057, Sept. 18, 1985, 85-2 CPD ¶ 303.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "David Ashen", with a long horizontal line extending to the right.

David Ashen
Acting Assistant General Counsel