



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chelsea Clock Company, Incorporated

File: B-251348.2

Date: May 24, 1993

Douglas B. Mauch for the protester.
Jonathan H. Kosarin, Esq., and Gary Van Osten, Esq.,
Department of the Navy, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Procuring agency properly rejected as late a proposal modification that did not reach the contracting officer until after the closing time, even though protester produced evidence of delivery of an Express Mail package to the installation prior to the closing time, since there is no evidence that the package contained the protester's modification or when its modification was received at the installation, and there is no evidence that the modification had been solely under the agency's control until it was discovered.

DECISION

Chelsea Clock Company, Incorporated protests the Navy's rejection of its offer as late under request for proposals (RFP) No. N00104-92-R-G131. Under the circumstances of this case, we find that the agency properly rejected the offer, and deny the protest.

The RFP was issued on August 6, 1992, by the Navy Ships Parts Control Center [SPCC] for a supply of wall clocks to be used on board ships. The Navy received three initial offers, including Chelsea's, by the closing date of September 8. On October 30, the Navy amended the RFP to increase the required quantity of clocks and to change the packaging specifications. In light of this amendment, the agency requested that the three offerors submit best and final offers (BAFOs) based on the amended requirement. The amendment advised offerors that their BAFOs "must be

received by the contracting officer in NSPCC [Naval Ships Parts Control Center], Bldg. 410, South End, Bid Room, Mechanicsburg, PA 17055 no later than 4:00 p.m. local time 25 Nov 1992."

Chelsea states in its protest that it prepared its BAFO and mailed it from the Post Office by Addressee Express Mail Next Day Service ("Express Mail") on November 18. In support of this assertion, Chelsea has submitted an Express Mail customer receipt (which is a copy of the mailing label) showing that it mailed a package to the exact address of the bid opening room listed in the amendment, with a bulls-eye stamp and notations indicating that it was mailed on November 18 at 7:41 a.m., and the signed return receipt that was sent back to the protester, showing that the package was delivered at the installation on November 19.

The agency report states that the contracting officer only received BAFOs from the other two offerors by the closing time that was established in the amendment. However, on December 1, "the contracting officer inexplicably received at her desk a BAFO from Chelsea." Although the BAFO was dated November 17, it was neither accompanied by a mailing envelope, nor was it time/date stamped by the bid room. The contracting officer concluded that since the BAFO was received after the closing date, it was late and could not be considered. She notified Chelsea that its offer was rejected as late, and Chelsea filed a protest with the agency.

Chelsea asserted in its protest that the contracting officer's late receipt of the BAFO was caused by government mishandling after timely receipt at the installation, and that the BAFO therefore should have been accepted and considered for award. The agency denied the protest on the basis that while Chelsea had provided convincing evidence that it had mailed a package that was delivered to the agency on November 19, it had not proven that package contained its BAFO. The Navy awarded the contract to Navistar/Marine Instrument, and this protest followed.

We think the agency could not accept Chelsea's BAFO. It is undisputed that Chelsea sent an Express Mail package to the installation and that it was received approximately 5 days prior to the closing date for receipt of BAFOs. Notwithstanding an affidavit from an officer of the firm stating that the only Express Mail package that the firm sent to the installation at that time contained Chelsea's BAFO, we have no objective proof of the contents of that package. While a BAFO from Chelsea appeared on the contracting officer's desk on December 1, from this record, we have no way of ascertaining when that BAFO arrived at the installation, nor can we determine whether it was under any

government official's custody during the time between its arrival until its reappearance. We can only surmise from all of the facts presented in the record, that the BAFO arrived at some point--perhaps in the Express Mail package as Chelsea described--but then was misplaced. A misplaced bid or proposal, whether mailed or hand delivered, may be considered for award if (1) the proposal was received at the installation prior to bid opening or the closing date for receipt of proposals, (2) it remained under the agency's control until discovered, and (3) it was discovered prior to award. See, e.g., Kuhnel Co., Inc., B-240624, Dec. 4, 1990, 90-2 CPD ¶ 455.

Regarding the time of receipt at the government installation, the Federal Acquisition Regulation (FAR) provides that the only acceptable evidence to establish the time of receipt is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation. FAR § 52.215-10(e).¹ Chelsea's BAFO had no time/date stamp on it, nor any other indication of the time it arrived at the installation, nor did it have any envelope attached. Thus, none of the requisite evidence is available to prove its time of receipt. While the report shows that receipt of an Express Mail package was entered on a daily log sheet maintained by the installation mailroom on November 20, the entry does not contain any information regarding the contents of the package. Thus, while it appears here that

¹The agency report describes SPCC's mail distribution procedures. The report states that all U.S. Postal Service mail is received in the SPCC mailroom, where mailroom employees sort it and deliver it to the appropriate offices on the installation. All certified, registered, and Express Mail items addressed to the SPCC bidroom are recorded on a daily log sheet by the mailroom. The log sheet entries include the sender's name and the package's Postal Service identification or article number. No notation is made on the logsheet to identify the contents of the package or the solicitation for which it has been submitted. When the mail is delivered to the bidroom, the bidroom attendant acknowledges receipt of the packages by signing the log sheet. The attendant then time/date stamps all of the envelopes and files them with the appropriate solicitation files maintained in the bidroom. Proposals and BAFO's are held until the closing time established in the RFP for their receipt, and then are released to the cognizant contracting officer.

the only documentary evidence of receipt available for the Express Mail package from Chelsea is the entry on the logsheet, we nonetheless are left without any evidence in this case to tie receipt of that package to this BAFO.²

Also lacking is any evidence that the BAFO remained under the agency's control during the time it was misplaced; the record is completely silent on this question. While we are not unsympathetic to the protester's apparent misfortune of possibly having its BAFO misplaced, we must point out that bid or procurement materials that are delivered to the contracting officer late may never be accepted if their consideration would compromise the integrity of the competitive procurement system. See, e.g., Isometrics, Inc., 71 Comp. Gen. 88 (1991), 91-2 CPD ¶ 477. In order for the late acceptance of a bid or proposal not to compromise the integrity of the system, it typically must travel through normal agency channels, remaining in the agency's exclusive possession and out of the bidder's reach. See Ranco Constr., Inc., B-246345, Feb. 26, 1992, 92-1 CPD ¶ 234; Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. In this case, the location of Chelsea's BAFO prior to its reappearance on December 1 remains a mystery.

While the reappearance of Chelsea's BAFO occurred prior to the time of award, thus satisfying the final requirement of the three-part test for misplaced procurement submissions, this does not help the protester's position; all three elements of the test must be met in order for the BAFO to be considered.

Although application of the rule in this case may seem harsh, we believe it is required by the need to treat all offerors fairly and equally and to maintain the integrity of

²In this connection, we also point out that there is nothing in the record to indicate that Chelsea had labeled its package as a BAFO or had marked the Express Mail envelope with the solicitation number or closing time as directed by FAR § 52.215-9. We have often found that the offeror's failure to place adequate information on its envelope or proposal package to identify it as containing a time-sensitive procurement submission may contribute to its misdirection and, ultimately, to its late delivery. See Barnes Elec. Co., Inc., B-241391.2, Jan. 4, 1991, 91-1 CPD ¶ 10; Weather Data Servs., Inc., B-238970, June 22, 1990, 90-2 CPD ¶ 582. The importance of this omission is even greater where, as here, the installation handles a heavy volume of procurement submissions on a daily basis.

the competitive system. See National Minority Research Dev. Corp., B-220057, Sept. 18, 1985, 85-2 CPD ¶ 303. Accordingly, we have no basis to excuse the late receipt of Chelsea's BAFO, which the Navy properly rejected.

The protest is denied.



James F. Hinchman
General Counsel