



Comptroller General
of the United States
Washington, D.C. 20548

1281912

Decision

Matter of: MC II Government Systems and Services, Inc.
File: B-258089
Date: December 15, 1994

John M. Falk, Esq., The Falk Law Firm, for the protester. Judy Clegg, for Clegg Power Division; Ronald C. Ball, for Goodman Ball, Inc.; and Mark R. Steele, for Fermont Dynamics Corporation of America, interested parties. Craig E. Hodge, Esq., and Capt. Brian E. Tolland, Department of the Army, for the agency. Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly rejected late proposal where offeror was the paramount cause of late delivery, even though contract specialist may have given unclear or incorrect directions.

DECISION

MC II Government Systems and Services, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. DAAK01-94-R-0034, issued by the U.S. Army Aviation and Troop Command (ATCOM), for Tactical Quiet Generator Sets. MC II argues that agency personnel misdirected MC II's representative, causing late delivery of its hand-delivered proposal. MC II also asserts that the contracting officer improperly revised her original decision to accept the MC II offer.

We deny the protest.

The RFP required receipt of proposals by 1 p.m., July 11, 1994. The solicitation provided that hand-carried offers were to be deposited with the Small and Disadvantaged Business Utilization (SADBU) Office located in Building 102E, at the ATCOM base, 4300 Goodfellow Boulevard, St. Louis, Missouri.

In an affidavit submitted to our Office, MC II's vice president states that he arrived in St. Louis on July 11 to hand deliver the MC II offer. Traveling by car, the vice president noted two entrances on Goodfellow Boulevard when

he approached the ATCOM facility; the first entrance had the 4300 street number and the words "Federal Center" on it; the second entrance had no street number or identification. The vice president saw a building identified as Building 100, Federal Center through the first gate (the main gate) and Building 101 with the words "U.S. Army Aviation and Troop Command" through the second gate (the ATCOM gate). Believing the ATCOM gate was closest to Building 102E based on the numbering progression of the buildings viewed through the gates, the MC II vice president states that he entered through the ATCOM gate at approximately 12:15 or 12:20 p.m.¹

The MC II vice president states that he saw no guard in the gate house at the ATCOM gate and drove around the complex searching for Building 102E. Because he could not find the building and could not find a parking space so that he could park his car and call for directions, the vice president states that he left the base at approximately 12:35 p.m. to find a public telephone. At 12:45 p.m., the MC II vice president states that he called the phone number provided in the solicitation and asked an ATCOM contract specialist for directions to the SADB Office from Goodfellow Boulevard. According to the vice president, the contract specialist told him to enter the base through the gate next to or closest to the "Reserve Center" and that he would see Building 102E "off to my right." The MC II official saw a Reserve Center building adjacent to the base next to the ATCOM gate. According to the vice president, he referred to this gate as the ATCOM gate in his conversation with the contract specialist and the contract specialist acknowledged that it was the ATCOM gate.

In contrast, the contract specialist states that during the telephone conversation, she thought the MC II vice president was on the base near Building 101, which is inside the ATCOM gate. Rather than telling him to go through the gate nearest the Reserve Center, as the MC II vice president states he was told, the contract specialist states that she "informed him that he needed to come in at the next gate on his right . . . to get to the SADB Office at B[uilding] 102E." The next gate is the main gate and Building 102E is to the right of this gate.

The MC II vice president states that at approximately 12:50 p.m. he entered through the ATCOM gate a second time and followed the road to the right. The vice president

¹In a July 14 letter, he stated that he entered at "approximately 12:20 p.m.," while in an August 4 affidavit submitted to this Office, he states "approximately 12:15 p.m."

states that when it became apparent that Building 102E was not in that direction, he turned around and followed the road behind Building 101, heading towards Building 100, the Federal Center, near the main gate. As he approached the main gate, he saw Building 102E, parked his car in the visitors lot, entered Building 102E and proceeded to the SADB Office. The MC II offer was logged in at 1:07 p.m., 7 minutes after the time specified in the RFP.

By letter dated July 21, MC II was informed that its offer was late and would not be considered for award. MC II argues that the late delivery was due to the contract specialist's misleading directions and that, but for those directions, its offer would have been timely delivered.

As a general rule, an offeror has the responsibility of assuring the timely arrival of its proposal at the place designated in the solicitation. However, a hand-carried offer that is received late may be accepted where improper government action was the paramount cause for late delivery and the integrity of the procurement process would not be compromised by acceptance of the offer. St. Charles Travel, B-226567, June 5, 1987, 87-1 CPD ¶ 575. In determining whether this standard is met, we consider whether an offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Id.

We cannot conclude that improper government action was the paramount cause of the late delivery here. As noted above, the MC II representative encountered numerous problems trying to deliver the offer. These problems, however, were not due to the agency's actions. For example, the MC II vice president admits that when he arrived at the Army facility, he did not know how to get to the SADB office. He states that base traffic was heavy and although he drove around for 20 minutes, he could not find the appropriate building. Because he could not find the appropriate building and could not find a phone on the base to use to call for directions, the MC II official had to leave the base to call.

There is a conflict in the record as to exactly what the company vice president was told when he called the contract specialist for directions. Even if we assume that he was given incorrect information, this record does not establish the reasonable likelihood that this was the paramount cause of the late delivery. Rather, based on our review of the record, we cannot conclude that MC II's vice president could have delivered the proposal on time even if appropriate directions had been clearly given and understood.

As noted above, when the MC II official entered the base the second time, he had already spent 35 minutes searching for the correct building and seeking directions and he now had only 10 minutes to deliver his offer. If he had attempted to enter the facility through the main gate, which the parties agree would have been the better route, the MC II vice president would have had to drive to the main gate (at least a quarter-mile drive with one or two stop lights, depending on where his car was parked), sign in with the guard (MC II concedes that a guard was on duty at the main gate), park his car at a nearby lot, walk across the street to Building 102E, locate the SADB office, and deliver his proposal. Given these steps, the distance to be traveled and the heavy traffic on the base, it is far from clear that the protester could have delivered its proposal in the remaining 10 minutes before the time set for receipt of proposals. Therefore, based on these facts, we think it is clear that late delivery was due far more to the MC II vice president's unfamiliarity with where he had to go than to any improper action by the government.

MC II also argues that the contracting officer "abdicated her responsibility and allowed legal counsel to reverse her decision" to accept the MC II offer. Based on a written statement from the MC II vice president concerning the late delivery and a conversation with the contract specialist, the contracting officer initially concluded that the contract specialist's directions "may have contributed to his (MC II's vice president) being late" and that if the government "misdirected him it would be similar to the gov[ernment's] mishandling the offer." The contracting officer, therefore, initially accepted and opened the offer. However, when she subsequently asked for legal advice on whether it was permissible to consider the MC II offer, she was informed of the legal standard for accepting a late hand-carried offer, and was given an analysis of the facts and a legal determination that the offer was late and should not be considered. After reviewing and reconsidering the facts and the legal standard, the contracting officer reversed her initial decision and informed MC II that its late proposal would not be accepted. Under these circumstances, we do not believe that she "abdicated" her responsibility. The contracting officer simply sought and received legal advice and input. We find nothing objectionable in her actions.

The protest is denied.


Robert P. Murphy
General Counsel