



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Preventive Care, Inc.

File: B-261842

Date: October 27, 1995

Ted Appel for the protester.

Jeffrey A. Mansfield, Esq., Department of the Navy, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal sent by commercial courier which was received by the contracting officer after award was properly rejected as late where the paramount cause of the late delivery was the offeror's failure to follow the solicitation instructions regarding the delivery of hand-carried offers and where the offeror's agent delivered the package to an activity other than the procuring agency.

DECISION

Preventive Care, Inc. (PCI) protests the rejection of its proposal as late under request for proposals (RFP) No. N00244-95-R-5172, issued by the Department of the Navy, Fleet and Industrial Supply Center (FISC), to supply a quantity of latex gloves. The protester contends that the late receipt of its proposal was the result of government mishandling.

The RFP, as amended, had a scheduled closing time and date of 3 p.m. on March 20, 1995. The solicitation directed offerors to mail their proposals to the address listed in block 8 of the solicitation as: Bid Officer Code PDSA, FISC, Regional Contracts Department, 937 N. Harbor Drive, Suite 212, San Diego, CA 92132-0212. It further specified that all hand-carried offers were to be delivered to the depository located at the address shown in block 9 as: FISC, Contracts Division, Building 1, 2nd Floor. The RFP also included a delivery instructions page which explained that only proposals sent by United States Postal Service should be sent to the address shown in block 8; all other offers would be considered hand-carried and should be deposited in the depository on weekdays between 8 a.m. and 4 p.m. The delivery instructions described how visitors to the FISC building should obtain a security pass, proceed to the second floor, and obtain a time and date stamp from the desk clerk showing receipt of the proposal package.

PCI sent its offer by commercial carrier, United States Parcel Service (UPS) Next Day Air Service, on March 13. The designated address on the protester's proposal package was the mailing address provided at block 8 for mailed offers, contrary to the RFP's instructions. At some undetermined time, after it was initially addressed, the designated street address on PCI's mailing label, "937 Harbor Drive," was crossed out, and the words "BLDG-116 NAVSTA (Building 116, Naval Station)" were hand-written on the mailing label. In any event, UPS records show that UPS delivered PCI's proposal package on March 14 to Building 3304, the Defense Distribution Depot (DDD), a non-Naval activity responsible for the receipt and distribution of provisions and supplies. The protester's proposal package was ultimately received at FISC on April 21, 2 days after contract award.

In a letter to the protester, UPS explained that its standard delivery procedure for packages addressed to FISC at 937 N. Harbor Drive is to deliver them to Building 3304, where DDD personnel will either accept delivery or provide the UPS driver with an alternate delivery destination. PCI argues that UPS was prevented from making timely delivery to the FISC mail address shown on its proposal package because of this alleged agreement between UPS and FISC to redirect all packages addressed to FISC to Building 3304, a centralized receiving depot. Since its offer was received at Building 3304, 6 days prior to the scheduled date for receipt of proposals, PCI alleges that FISC's internal procedures and de facto agreement with UPS were the paramount cause of the late delivery to the contracting officer, and that its proposal should be accepted.

FISC denies that the activity has any agreement with UPS to forward packages addressed to 937 N. Harbor Drive to any location other than the FISC depository. FISC asserts that the late receipt of the protester's offer was due to its own negligence. In this regard, the agency points out that PCI's proposal package was addressed to the activity's mailing address rather than the address for hand-carried offers; that the mailing address was changed by someone other than Navy personnel to Building 116 at the Naval Station, some 10 miles from the FISC depository; and that PCI's agent actually delivered the proposal package to DDD, a non-Naval activity.

Offerors are responsible for delivering their offers to the proper place at the proper time, and late delivery of an offer generally requires its rejection. See Gould Metal Specialties Inc., B-246686, Mar. 27, 1992, 92-1 CPD ¶ 311. An offer delivered to an agency by UPS or other commercial carrier is considered to be hand-carried, and, if it arrives late, can only be considered if it is shown that improper government action was the paramount cause of its late receipt. See Sencland CDC Enters., B-252796; B-252797, July 19, 1993, 93-2 CPD ¶ 36. A late offer cannot be considered if the offeror or its agent, through some action or inaction, contributed significantly to the late receipt. Id.

Here, based on our review of the record, we conclude that PCI and its agent, UPS, contributed significantly to the late receipt of the protester's offer. First, PCI addressed the proposal package to the activity's mailing address rather than to the address specified for delivery of hand-carried offers. Thus, PCI did not follow the solicitation instructions for delivery of hand-carried offers; accordingly, it directly contributed to the failure to deliver the offer to the depository.

Moreover, even had the proposal package been properly addressed, the record shows that UPS delivered PCI's offer in accordance with its own procedures for delivery of packages to San Diego Naval locations--not to the designated FISC mailing address, or to the altered Building 116 address, but to DDD, a non-Naval activity. UPS' correspondence to the protester states that the delivery procedures UPS followed were UPS' own current procedures, not the Navy's. UPS does not claim that the Navy has any explicit agreement or understanding that UPS deliveries be routed to DDD at Building 3304. UPS states that "we have used this as a standard procedure to help us provide the best possible service for these . . . facilities." DDD is a supply and provisions distribution depot, not a mail handling facility. According to FISC, DDD's procedure for handling packages with a partial or incomplete address is to simply hold it until claimed; if not claimed, DDD personnel then routes the package to the partial address shown. Thus, UPS delivered the offer to a non-Navy facility which has no system or procedures for mail delivery.

The protester does not claim that the proposal package was identified or clearly marked (other than with the solicitation number), so as to alert any personnel at DDD that it contained an offer. We thus do not think that DDD personnel could reasonably have been expected to be aware of the contents of PCI's package, the proper office to which to forward the package or the need for expeditious handling to beat the closing time. Under these circumstances, the time spent rerouting the proposal package to the FISC location cannot be viewed as the paramount cause for the late receipt. See J.E. Steigerwald Co., Inc., B-218536, Apr. 19, 1985, 85-1 CPD ¶ 453. We conclude that the proposal was late and could not be accepted for award consideration.

The protest is denied.

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