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R. Lynn  
P. 11

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-191394

**DATE:** April 26, 1978

**MATTER OF:** Presnell-Kidd Associates

**DIGEST:**

1. Protest of agency refusal to consider proposal, hand-delivered after due date for receipt of proposals, is denied where circumstances of late delivery do not fall within any of the requests for proposals' (RFP) late proposal clause exceptions.
2. Protest of agency refusal to extend due date for receipt of proposals on account of extraordinary weather conditions or to permit last-minute telegraphic proposals is denied where reasons for refusal are reasonable.

Presnell-Kidd Associates (PKA) protests the U.S. Forest Service's rejection of its late proposal submitted in response to solicitation No. R9-78-08 (RFP) for a Feasibility and Desirability Study on the proposed Shawnee Hills National Recreation Area, Shawnee National Forest.

The facts are not in dispute. The RFP, which required separate technical and budget proposals, stated that offers would be received until 3:00 p.m. on February 1, 1978. On Monday, January 30, 1978, PKA orally requested an extension of the time set for receipt of initial proposals because of the severe weather conditions which had halted essential services throughout the midwest. That request was denied. On Wednesday, February 1, 1978 PKA's representative telephoned the agency seeking information on procedures for sending essential items of the proposal by telegram and was advised that such procedures were not authorized for this particular solicitation.

Subsequently, sixteen timely proposals and four late proposals were received. The PKA proposal was hand-delivered twenty minutes late, and Forest Service personnel advised PKA's representative that the proposal could not be considered.

E-191394

PKA believes its late proposal should be considered for three reasons. First, PKA asserts that unusual circumstances, over which it had no control; affected the preparation and delivery of the proposal. PKA claims the preparation of its proposal was hindered by two record snow storms which struck Louisville, Kentucky on January 16, 1978 and again on January 25, 1978 resulting in its loss of several work days, and that the delivery was thwarted by a two hour flight delay out of Chicago. Second, PKA contends that it did what it could to ward off the adverse impact of the unusual circumstances by initially requesting a time extension and later seeking an alternate means of transmission for the proposal. Finally, PKA argues that common sense militates against the strict application of specific cutoff times in negotiated procurements. PKA does not believe that a strict application of the timeliness standard is appropriate in negotiated procurements where the primary selection criteria consist of technical qualifications, experience and the expressed ability to address a given problem because there is no public opening which could give rise to problems of collusion and prior knowledge of a competitor's proposal.

The late proposal clause of the RFP reads, in part, as follows:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of

B-191394

offers by the 20th of the month must have been mailed by the 15th or earlier);

(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only proposal received."

We have long held that an offeror is charged with the responsibility of insuring that its proposal arrives on the proper date and time, and that by choosing methods of delivery other than those specified in the late proposal clause, an offeror assumes a high degree of risk that its proposal will be rejected if untimely delivered. Young Engineering Systems, 55 Comp. Gen. 754, 757 (1976), 76-1 CPD 96 and cases cited therein. We have permitted acceptance of a late handcarried proposal only where it can be shown that improper action of the Government was the proximate cause of the lateness, but not when the actions of the offeror are significant or intervening causes of the delay. Young Engineering Systems, supra. This is so because our Office believes that the negotiated system of procurement is strengthened by adhering to the solicitation requirement that only proposals received before the time stated would be for consideration unless the listed exceptions are applicable. While strict application of the late proposal provisions might appear unduly harsh in certain instances, it is our view that relaxation of the limitation would create confusion and unequal treatment. Jack Fawcett Associates, B-181052, July 10, 1974, 74-2 CPD 19.

Turning to PKA's second contention, that it sought both a time extension and an alternate means of transmission, we have recently held that:

B-191394

"[w]here it is anticipated that inclement weather will prevent timely hand delivery of an offer or bid, the appropriate relief, if any, is an extension of the closing or bid opening date. If due consideration, in fact, is given to such a request prior to the due date and [it] is denied, we believe it would adversely affect the integrity of the competitive procurement system, if a late bid or offer thereafter is permitted to be considered." Falcon Research & Development Co., B-188321, May 4, 1977, 77-1 CPD 306.

However, we also noted in Falcon that the decision not to extend the closing date must not be arbitrary. In this regard, the record shows that the requirement was synopsised in the Commerce Business Daily (CBD) on December 7, 1977 and that PKA requested a copy of the solicitation by letter dated December 19, 1977 (12 days after the CBD publication). The solicitation was mailed to PKA on December 23, 1977. Also, the Forest Service reports that the contract requirement for a feasibility and desirability study for a proposed national recreation area, necessitated Forest Service compliance with congressionally directed time limits as well as compliance with time limits imposed by various regulations requiring public involvement in the development of national recreation areas. The Forest Service did not believe that it could meet the required deadlines if PKA's request for an extension were granted. In view of the time available from the date of the CBD notice for proposal preparation, and the scheduling difficulties an extension could have created for the Forest Service, we do not believe the Forest Service abused its discretion in refusing to extend the due date. Ecology and Environment, Inc., B-188354, June 15, 1977, 77-1 CPD 428. The fact that 16 timely proposals were received (one of which was submitted by a Louisville, Kentucky firm) demonstrates that the agency allowed sufficient time for preparation

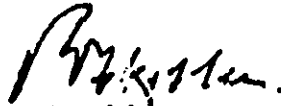
B-191394

of proposals. In addition, we believe that the RFP requirement for separate technical and budget proposals effectively precluded telegraphic proposals. Moreover, granting of PKA's eleventh hour request, when telegraphic transmission was not authorized in the solicitation, would have prejudiced the three other late offerors and been unfair to those offerors who endeavored to submit their offers on time.

With respect to PKA's contention that the philosophy of a specific cutoff time should not pertain in negotiated procurements we have in the past observed that:

"[i]t must be recognized \* \* \* that there is always a danger of premature disclosure of information during the course of a negotiated competitive procurement and for this reason the concepts of cutoff dates and lateness were introduced into the negotiation process." B-169535, July 15, 1970.

For the foregoing reasons, the protest is denied.

  
Deputy Comptroller General  
of the United States