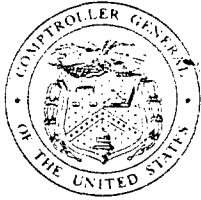


DECISION



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

9814

FILE: B-194312

DATE: April 13, 1979

MATTER OF: O.D.N. Productions, Inc. *DLG00040*

[Protest of Proposal Rejection]
DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision without obtaining report from agency.
2. Proposal sent by commercial messenger service and received after time specified for receipt due to delays caused by unusually severe weather was properly rejected since solicitation contained no provision for its consideration under circumstances presented here.

O.D.N. Productions, Inc. (O.D.N.), protests the rejection of its proposal under request for proposals (RFP) HSA 240-BCHS-44(9) GJG, issued by the Department of Health, Education, and Welfare (HEW). The basis for the rejection was that the messenger-delivered proposal was received by HEW 68 minutes after the time set for receipt of proposals (February 22, 1979, at 4 p.m.).

This case falls within the ambit of our decisions which hold that where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1978). Hot Lake Development, Inc.; Vale Geothermal, Inc., B-192512, August 18, 1978, 78-2 CPD 135; Chambers Consultants and Planners, B-192465, August 18, 1978, 78-2 CPD 134.

O.D.N. claims that the reason its proposal was late in arriving at the procuring activity was because

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of the heavy snowstorm which struck Washington, D.C., a few days before the date set for the receipt of proposals and so disrupted the normal flow of business during that period that O.D.N.'s messenger was unable to deliver the proposal on time. Based on this, O.D.N. requests that its proposal be considered for award.

It appears from its submission that O.D.N. could have mailed its proposal as early as Friday, February 16, 1979, some 5 days before the date set for the receipt of proposals. However, O.D.N. maintains that, while it had originally intended to use the mail, it decided not to because it was concerned that the proposal would not be delivered on time since a holiday, Washington's Birthday, fell on Monday, February 19, 1979.


As O.D.N. points out, the Washington, D.C., area was hit by a heavy snowstorm during the Washington's Birthday weekend, and this storm did cause Federal Government offices to remain closed through Tuesday, February 20, 1979. However, the Federal Government was open for business on both February 21 and 22, 1979. Nevertheless, O.D.N. claims that even as late as February 22, 1979, transportation in the Washington, D.C., area was slowed so significantly that its messenger service was unable to deliver its proposal to the procuring activity by the 4 p.m., deadline.

The general rule for submission of bids or proposals is that the bidder/offeror has the responsibility for delivery to the proper place at the proper time. Federal Contracting Corp. et al., 54 Comp. Gen. 304 (1974), 74-2 CPD 229. Consideration of late bids or proposals may be permitted only in the exact circumstances provided for in the solicitation. Defense Products Company, B-185889, April 7, 1976, 76-1 CPD 233.

In the present case, we have been advised that the RFP contained the standard contract provision for late proposals, and we note that nothing in that provision permits the acceptance of a late proposal sent by commercial messenger service. See Federal Procurement Regulations § 1-3.802-1 (1964 ed. amend. 193). Under these circumstances, we have held that

where the offeror chooses a method of delivery other than specified in the late proposal clause, and a delay in delivery does occur, the proposal is not for consideration even if the delay resulted from unanticipated causes. Jerry Warner and Associates, 57 Comp. Gen. 708 (1978), 78-2 CPD 146.

In view of the above, rejection of the late proposal was proper, and the protest, therefore, is summarily denied.


Deputy Comptroller General
of the United States