



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Integrated Support Systems inc

File: B-283137.2

Date: September 10, 1999

Barbara S. Kinosky, Esq., and James S. DelSordo, Esq., Williams Mullen Clark & Dobbins, for the protester.

Terry Hart Lee, Esq., and Stacia D. LeBlanc, Esq., Department of Commerce, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's hand-delivered proposal as late where the protester significantly contributed to the late receipt of the proposal by failing to allow sufficient time for timely delivery of the proposal.

DECISION

Integrated Support Systems inc (ISSi) protests the rejection of its proposal under request for proposals (RFP) No. 52-SAAA-9-00010, issued by the Department of Commerce for the acquisition of Commerce Information Technology Services. ISSi objects to Commerce's rejection of its proposal as late because the agency allegedly failed to inform ISSi of the correct location for hand-delivery of its proposal.

We deny the protest.¹

The RFP stated the time for receipt of proposals as March 26, 1999, at 3 p.m., Eastern Standard Time. Agency Report, exh. A, Instructions to Prospective Offerors. The RFP provided that for proposals that are hand-carried or sent by courier service "the Offeror assumes full responsibility for ensuring that the offer is received at the U.S. Department of Commerce, 14th & Constitution Avenue, NW (Use 15th Street

¹This decision is made under our express option procedures. 4 C.F.R. § 21.10 (1999).

entrance), Office of Security/Courier Service Center/Room 1874, Washington, DC 20230 by 3:00 P.M. EST.” RFP § L.5. Offerors were also informed that the building was a “secure building” and all but uniformed couriers were required to deliver packages to the 15th Street entrance for the Office of Security/Courier Service Center. Id. The RFP incorporated Federal Acquisition Regulation § 52.215-1, Instructions to Offerors--Competitive Acquisition (Oct 1997), which, among other things, provided that proposals received at the office designated in the solicitation after the exact time specified for receipt of offers would generally be rejected.²

On March 26, ISSi’s president attempted to hand-deliver ISSi’s proposal. He states that he arrived at a 15th Street entrance to the Department of Commerce building at precisely 2:57 p.m., but was informed that this was not the correct entrance for delivery of proposals to the Courier Service Center. Agency Report, exh. D, Letter from the Protester to the Contracting Officer (June 3, 1999). The protester’s president proceeded to the other 15th Street entrance, which is marked “Courier Entrance,” but arrived after 3 p.m.³ An agency contract specialist was present in room 1874 from 2:30 to 3 p.m.; at 3 p.m. the contract specialist declared that time for receipt of proposals had ended and exited the room at about 3:01 p.m. ISSi’s proposal was not delivered prior to the contract specialist leaving room 1874. Agency Report, Declaration of Contract Specialist, ¶ 8. The agency rejected ISSi’s proposal as late, and this protest followed.

It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. FAR § 15.208; The Staubach Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 3. However, a hand-carried proposal that arrives late may be considered if improper government action was the paramount cause for the late submission, and where consideration of the proposal would not compromise the integrity of the competitive process. Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id. Even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility to deliver a hand-carried proposal to the proper place by the proper time. Id.; Adirondack Constr. Corp., B-280015.2, Aug. 25, 1998, 98-2 CPD ¶ 55 at 6.

There is no dispute here that ISSi’s proposal was late. Instead, ISSi contends that the sole cause of the proposal’s untimely receipt was the ambiguous RFP instructions as

²The RFP also incorporated the now expired FAR § 52.215-10 (Dec. 1989), which contained much the same language in this respect.

³The parties disagree as to how late the proposal was delivered, a question we need not resolve; all that matters here is that the proposal was delivered late.

to where to hand-deliver proposals. Protest at 4-5; Comments at 4. However, even assuming that the RFP was not as clear as it could have been, given the two 15th Street entrances, the record demonstrates that the protester significantly contributed to the late receipt of its proposal by failing to allow sufficient time to hand-deliver its proposal. By the protester's own admission, ISSi's president arrived at the first 15th Street entrance a mere 3 minutes before the time set for receipt of proposals. Agency Report, exh. D, Letter from the Protester to the Contracting Officer (June 3, 1999). We have found that an offeror significantly contributed to the late receipt of its proposal where it failed to allow sufficient time to permit a timely submission. See Wyatt and Assocs., B-243349, July 1, 1991, 91-2 CPD ¶ 5 at 2-3 (arrival at building entrance 10 minutes before the time set for receipt of proposals significantly contributed to the late receipt of the offeror's proposal); see also Monthei Mechanical, Inc., B-216624, Dec. 17, 1984, 84-2 CPD ¶ 675 at 3 (where bidder left only 30 seconds before bid opening to submit its hand-carried bid, agency's movement of bid depository box from customary place in building foyer to the actual bid opening room prior to bid opening was not the paramount cause for the late submission of the bid). We cannot say that improper action by the agency was the paramount cause of the late receipt of ISSi's proposal where the protester failed to allow sufficient time to ensure the timely delivery of its proposal. Accordingly, we conclude that the agency reasonably rejected ISSi's late-delivered proposal.

The protest is denied.

Comptroller General
of the United States