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DECISION



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

FILE: B-204812.3

DATE: February 17, 1982

MATTER OF: DATA CONTROLS/North, Inc.

DIGEST:

1. Where only evidence of timely submission of proposal is conflicting statements from protester and contracting agency, protester has not met burden of affirmatively proving its case and time/date stamp on proposal will be considered controlling, which renders proposal late.
2. When and how an agency returns a late proposal that cannot be considered for award is within the discretion of the contracting agency.
3. Mere speculation is not sufficient to sustain allegation of bias.

DATA CONTROLS/North, Inc. (Data Controls), protests the rejection by the Department of Justice, Immigration and Naturalization Service (Immigration), of its proposal as late submitted pursuant to request for proposals No. CO-6-81. The closing date for receipt of proposals was September 18, 1981, at 2 p.m.

Data Controls' proposal was handcarried to the specified room (No. LL-100) for receipt of proposals by the company's driver. Immigration's front-entrance log indicates that the driver arrived at the entrance at 1:57 p.m. Data Controls states that once its driver signed in, he proceeded by elevator down one floor to room LL-100. It is Data Controls' position that its driver was in the designated room before 2 p.m. Data Controls argues that there are two reasons why its proposal was not timely stamped: (1) its driver waited until two people (the contract specialist and an unnamed man) in the designated room finished talking and (2) the person instructed to stamp in the proposal first filled out the receipt and then stamped in the proposal, which

time/date stamp showed 2:01 p.m. In addition, Data Controls questions why its driver was told that since he was in the room at 2 p.m., Immigration would accept the proposal and 1 week later there was a complete reversal. Data Controls submits that if its proposal was late, it should have been immediately returned to its driver. Data Controls contends that its proposal was rejected as late because Data Controls and another company have a lawsuit pending in the Court of Claims, (Milmark Services, Inc. v. United States, No. 404-81).

Immigration argues that when Data Controls' driver entered the room he handed the proposal to the contract specialist, who immediately had a secretary stamp in a receipt form and complete the form. Immigration denies that the driver was told the proposal would be accepted since he was in the room at 2 p.m. Immigration states that the driver was informed that the proposal would be processed as a late proposal, with written notification to follow. In addition, Immigration also denies that Data Controls' pending lawsuit influenced its actions because the responsible procurement personnel first became aware of Data Controls' affiliation with Milmark Services, Inc., on September 29, 1981, 4 days after Data Controls was advised that its proposal was considered late and ineligible for award.

As noted above, there are only conflicting statements concerning when Data Controls' driver entered the designated room for receipt of proposals and what occurred thereafter. In these circumstances, we find the protester has not met the burden of affirmatively proving its case (See Airwest Helicopters, Inc., B-193277, June 7, 1979, 79-1 CPD 402) and, therefore, the time/date stamp is controlling in this instance. Compare Pan Am Construction and Management Co., B-191238, May 9, 1978, 78-1 CPD 352. Since the time/date stamp showed 2:01 p.m., the proposal was late.

Data Controls' allegation that its proposal, if late, should have been immediately returned to its driver, is without merit. Federal Procurement Regulations § 1-3.802-1(b) (1964 ed., amend. 206) provides that the "disposition of late proposals that cannot be considered for award shall be in accordance with agency procedures." When and how an agency returns

a late proposal that cannot be considered for award is within the discretion of the contracting agency.

Data Controls' last contention is that the sole reason for Immigration's refusal to consider its proposal is a pending lawsuit. Data Controls has not submitted any evidence to substantiate its contention. Instead, Data Controls merely alleged a bias as a result of the lawsuit. Absent independent evidence of bias, the charge amounts to mere speculation and, as such, falls short of satisfying the protester's burden of affirmatively proving its case as to this issue. See Westvold & Associates, B-201032, May 6, 1981, 81-1 CPD 354.

Data Controls' protest is denied.

for 
Comptroller General
of the United States