

DECISION



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

FILE:

B-222329

DATE: April 15, 1986

MATTER OF:

The University of Kansas

DIGEST:

A proposal hand-delivered after the time specified for receipt must be rejected as late, even though the cause of the delay, bad weather and congested air traffic, was beyond the offeror's control.

The University of Kansas protests the rejection of its proposal in response to request for proposals No. NCI-CN-65005-03, issued by the Department of Health and Human Services' National Cancer Institute, Bethesda, Maryland. The protester asks that the late proposal be considered because bad weather and air traffic congestion delayed its employee who was hand-carrying the proposal.

We dismiss the protest.

The due date for the receipt of proposals was February 19, 1986, at 3:30 p.m., in Washington, D.C. The protester's employee was scheduled to arrive in Washington at 12:32 p.m. that day with its offer but, due to bad weather and air traffic congestion, the Trans World Airways flight from Kansas City landed in Baltimore at 2:53 p.m. Upon arrival in Baltimore, the employee immediately called the contracting officer (3:06 p.m.), informing her that the delay would mean that the delivery of The University of Kansas' offer would not arrive by the time for receipt of proposals. The employee asked for more time, which was denied by the contracting officer, and the offer was then delivered late.

The protester argues that in view of the fact the flight was delayed and also that the solicitation was not one calling for selection of the lowest bidder, the government should consider the protester's offer as being constructively delivered as of the time the protester's employee called from the airport.

Bidders and offerors are responsible for the timely delivery of their bids and proposals, and late delivery generally requires rejection. See Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.304-1 and 15.412 (1984).

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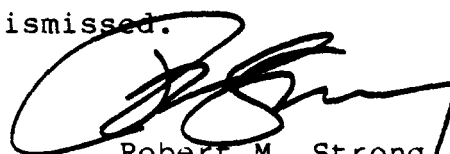
A proposal that is hand-carried by an offeror and arrives late can only be considered if the paramount cause of delay is wrongful government action and consideration of the proposal would not compromise the integrity of the competitive procurement system. "Wrongful Government action," in this context, means affirmative action on the government's part, such as improper conflicting delivery instructions, that made it impossible for the hand-carried proposal to be timely delivered. See T. E. DeLoss Equipment Rentals, B-214029, July 10, 1984, 84-2 C.P.D. ¶ 35. There is no evidence here of any government impropriety that would fall within this exception.

While the airline delay was beyond the protester's control, the FAR clause that permits consideration of late submissions applies to only those sent by mail (or telegram if authorized) unless the proposal is the only one received. 48 C.F.R. § 52.215-10. We have held that where an offeror chooses to hand-carry a proposal rather than use a method of delivery 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. For example, we have held this clause provided no basis to consider a late proposal where the messenger carrying it was delayed by a snowstorm. O.D.N. Production, Inc., B-194312, Apr. 13, 1979, 79-1 C.P.D. ¶ 267. Similarly, we upheld the rejection of a hand-carried proposal that was received 5 minutes after the time set for receipt of proposals where the lateness was due to unexpected traffic delays. Briggs Engineering and Testing Co., Inc., B-192943, Oct. 3, 1978, 78-2 C.P.D. ¶ 256.

While application of the rule may seem harsh, it is required by the need to treat all offerors fairly and equally and to maintain the integrity of the competitive system. See Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 C.P.D. ¶ 366.

In view of the above, we find the rejection of the proposal was proper.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel