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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Sundstrand Data Control, Inc.

File: B-227818

Date: June 16, 1987

## DIGEST

1. Contracting agency acted properly in refusing to consider late hand-delivered proposal where late delivery was due solely to protester's actions. Statutory requirement that contracting agency solicit as many sources as practicable when using other than competitive procedures does not require acceptance of late hand-delivered proposal, which may be accepted only where late delivery is due to improper governmental action.

2. Contention that contracting agency allowed insufficient time for submission of proposals after issuance of a significant amendment to the solicitation is untimely where not raised before proposal due date.

## DECISION

Sundstrand Data Control, Inc. protests any award under request for proposals (RFP) No. F09603-87-R-0364-0002, issued by the Air Force for a test programmer logic computer. Sundstrand contends that it was improper for the Air Force to refuse to consider Sundstrand's proposal under the RFP, which was delivered late. We dismiss the protest.

Sundstrand states that it had arranged for its proposal to be sent by Federal Express from its office in Redmond, Washington to its office in Atlanta, Georgia, from where it was to be hand-delivered to the contracting activity. Due to a delay by Federal Express, the proposal was not timely received in Sundstrand's Atlanta office and, as a result, Sundstrand maintains, its proposal was not hand-delivered to the contracting activity until 30 minutes after the time set for receipt of initial proposals. Sundstrand argues that because only one other proposal was received, the Air Force should have accepted its proposal even though it was submitted late, in order to promote full and open competition. We disagree.

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First of all, the full and open competition standard did not apply to this procurement. In a letter to Sundstrand dated May 26, 1987, denying its agency-level protest on the same grounds, the Air Force stated that only three proposals were anticipated and that the procurement was conducted using other than competitive procedures. See 10 U.S.C. § 2304(c) (Supp. III 1985). Generally, when noncompetitive procedures are used, an agency is required only to solicit offers from as many sources as practicable, not, as Sundstrand maintains, to obtain full and open competition through the use of competitive procedures. See 10 U.S.C. § 2304(e). Therefore, Sundstrand's reliance on the absence of full and open competition here is misplaced.

In any event, we see no basis for Sundstrand's argument that the Air Force's failure to accept its late proposal was inconsistent with either the requirement to obtain full and open competition where competitive procedures are used, or to solicit as many sources as practicable where, as here, other than competitive procedures are used. On the contrary, a contracting agency may accept a late hand-delivered proposal only where improper governmental action--defined as action making it impossible for an offeror to deliver its proposal on time--was the paramount cause of the late delivery, and consideration of the proposal would not compromise the integrity of the competitive procurement process. Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. No such circumstances exist here, since the late delivery clearly was due solely to Sundstrand's actions, not the Air Force's.

To the extent Sundstrand argues that the Air Force should have extended the time for receipt of proposals in order to allow consideration of its proposal, there is no indication in the record that Sundstrand timely requested such an extension; in the absence of such a request, there was no reason for the Air Force to extend the due date and time unilaterally.

Finally, Sundstrand maintains that the Air Force allowed insufficient time to submit proposals after issuance of a significant amendment to the RFP. This contention is untimely since it was not raised before the proposal due date. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986); Creative Pultrusions, Inc.--Reconsideration, B-218732.2, May 15, 1985, 85-1 CPD ¶ 553. In any event, the record shows that after issuing the amendment the Air Force specifically asked Sundstrand if sufficient time had been allowed to submit proposals, and Sundstrand concedes that it agreed to the Air Force's proposed due date.

Sundstrand also requested that we hold a conference on the protest. Since the protest is without merit on its face, no useful purpose would be served by holding a conference.

The protest is dismissed.

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