



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kings Point Industries

File: B-228150

Date: November 10, 1987

DIGEST

1. Where telegraphic proposal modification is time/date stamped by the procuring agency 20 minutes prior to time for receipt of offers, late receipt is due to offeror's failure to allow sufficient time for delivery notwithstanding Western Union records which purport to show the modification was transmitted over an hour prior to time for receipt of offers, since the only acceptable evidence to establish timely receipt is the time/date stamp of the government installation.
2. Where solicitation specifies that offer must be received at a particular location receipt at a different location at the government installation prior to the time specified for receipt of offers does not make the proposal timely.

DECISION

Kings Point Industries protests the rejection of its telegraphic proposal modification as late and the award of a contract to Tennier Industries, Inc., for casualty evacuation bag liners under request for proposals (RFP) No. DLA120-87-R-0743, issued by the Defense Personnel Support Center (DPSC) Defense Logistics Agency.

We deny the protest.

According to the solicitation, initial offers were to be received by 3:00 p.m. on April 27, 1987, and telegraphic modifications were authorized. Kings Point submitted a modification to its offer by Western Union telex reducing its prices, which would have made Kings Point the lowest offeror. The telex was time/date stamped in the DPSC teletype room at 2:40 p.m. The teletype room log noted that the teletype personnel called the procurement office at 2:55 p.m. and that the modification was picked up at

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3:10 p.m. The procurement office never received the modification. The agency refused to consider the modification because it was determined to be late and the contract was awarded to Tennier, the only other offeror, on July 21.

Kings Point contends that Western Union records unequivocally establish that the modification was directly transmitted to DPSC at 1:52 p.m. and took 1.3 minutes to complete. Kings Point argues government mishandling resulted in its modification being received late.

The RFP incorporated the "Late Submissions, Modifications and Withdrawals of Proposals" clause as set forth at Federal Acquisition Regulation, 48 C.F.R. § 52.215-10 (1986). Under the terms of that clause a late proposal modification is one received at the office designated in the solicitation after the exact time specified for receipt. According to that clause, a late telegraphic modification may be considered if its late receipt was caused by government mishandling after receipt at the government installation. The clause also specifies that the only acceptable evidence to establish the time of receipt at the government installation is the time/date stamp or other documentary evidence of receipt maintained by the installation.

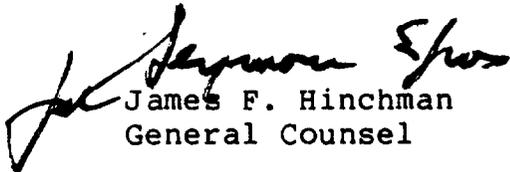
The only proof by Kings Point of mishandling in receipt is information from Western Union. Despite the protester's argument that evidence of receipt from Western Union is both accurate and objective and should govern, both the procurement regulation, FAR, 48 C.F.R. § 15.412, and the late proposal terms incorporated into the solicitation provide that evidence of receipt from a source outside the government installation is unacceptable. Thus, we think it would be improper for our Office to consider information from Western Union to establish the time of receipt of a telex. See Monroe Wire & Cable Co., B-221896, May 28, 1986, 86-1 CPD ¶ 494. Therefore we will assume that Kings Point's proposal modification arrived at 2:40 p.m., as evidenced by the time/date stamp.

The 2:40 p.m. arrival time allowed DPSC 20 minutes for delivery from the teletype office to the opening office. We will not attribute late arrival to government mishandling after receipt if an offeror does not allow reasonable time for a proposal modification to be delivered from the point of receipt at the installation to the designated location for receipt of offers. See Happy Penguin, B-225715, Feb. 20, 1987, 87-1 CPD ¶ 196. Here, the record shows that the

procurement office was notified of the arrival of the telegram 15 minutes after it was received and the telegram was picked up within another 15 minutes. Although this would have resulted in the late arrival of the modification at the procurement office, we do not attribute this to government mishandling because we do not believe that 20 minutes was sufficient time to permit delivery to the procurement office.1/ See Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2 CPD ¶ 491.

In the alternative, Kings Point appears to argue that its proposal should have been considered because it was received by the agency, in the teletype office, prior to the time specified for receipt of proposals. We disagree. The solicitation's late proposal clause specifies that proposals must be received at the office designated for receipt of proposals in the solicitation. The solicitation specifies at box 8, on page 1 that proposals will be received at, "DPSC: APO, Bldg. 9, 4-F." Telegraphic offers were to be sent to the number set forth at box 7A. The record shows that this is a separate location in the same building. According to the solicitation, a proposal is timely only if it is received at the location specified in box 8 by 3:00 p.m. The fact that a modification may be at another location on the government installation at the specified time does not make its receipt timely. See Retsina Co., B-212471, Aug. 3, 1984, 84-2 CPD ¶ 148.

The protest is denied.


James F. Hinchman
General Counsel

1/ The procurement office never actually received the modification. Since, however, the modification was not received in time to insure its arrival at the procurement office at the time for receipt of proposals this is not relevant.