



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Short & Associates, Inc.

File: B-231614

Date: June 13, 1988

DIGEST

1. Proposal delivered by Federal Express after the closing date for receipt of proposals properly was rejected where late delivery was caused by Federal Express and not the government.
2. Contention that contracting agency allowed insufficient time for submission of proposals after issuance of an amendment is untimely where it is not raised before the closing date for receipt of proposals.

DECISION

John Short & Associates, Inc. (JSA), protests the determination by the Naval Regional Contracting Center (NRCC) that the proposal JSA submitted in response to solicitation No. N00140-88-R-0244 was late and could not be accepted. We dismiss the protest without receiving a report from the contracting agency, since it is clear from JSA's filing that the protest has no legal merit. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

The closing date for receipt of proposals was May 23, 1988. JSA sent its proposal on May 20 via Federal Express, for delivery to NRCC by 10:30 a.m. on May 23. According to JSA, at 10:45 a.m. on May 23 it tried unsuccessfully to confirm receipt of its proposal with NRCC personnel by telephone. JSA states it tried a second time at 3:45 p.m., and was notified by a return telephone call at 4:15 p.m. that the proposal had not been received. JSA subsequently learned that, because the airbill attached to the proposal became detached during transit, Federal Express did not deliver the proposal to NRCC until the morning of May 24.

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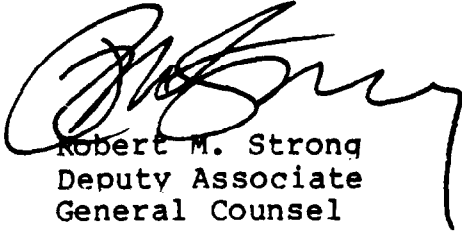
JSA asserts that had it been able to reach NRCC by telephone at 10:45 a.m. it would have had sufficient time to hand-deliver a copy of the proposal. JSA further contends that an amendment to the solicitation that it received on May 19 should have extended the closing date to allow JSA to review more fully the amendment's impact. Finally, JSA argues that accepting the proposal would not harm other offerors because JSA did not have any more time to prepare its offer than they did.

A proposal delivered to an agency by Federal Express or other commercial carrier is considered to be hand-carried and, if it arrives late, can only be considered if it is shown that the sole or paramount reason for the late receipt was some government impropriety. Edward Ochman Systems, B-229762, Jan. 7, 1988, 88-1 CPD ¶ 14. In this case, the cause of the late delivery of JSA's proposal was neither the unsuccessful attempt to contact NRCC by telephone at 10:45 a.m., nor the amendment receipt on May 19. The paramount cause for the late delivery was the problem Federal Express had with the airbill during transit. See Rodale Electronics Corp., B-221727, Apr. 7, 1986, 86-1 CPD ¶ 342.

JSA also contends that it did not have enough time before proposals were due to address the impact of the amendment the firm received on May 19. This contention is untimely, however, because it was not raised before the closing date for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Sundstrand Data Control, Inc., B-227818, June 16, 1987, 87-1 CPD ¶ 599.

JSA's last argument is that acceptance of its late proposal would not harm other offerors because JSA did not receive any additional time to prepare its proposal. The reason for the late proposal rules, however, is that the manner in which the government conducts its procurements must be subject to clearly defined standards that apply equally to all so that fair and impartial treatment is ensured. There must be a time after which proposals generally may not be received. To permit one offeror's proposal to be accepted after the closing date would inevitably lead to confusion and unequal treatment of offerors and thus would tend to subvert the competitive system. While we realize that by application of its late proposal rules the government at times may lose the benefit of proposals that offer more advantageous terms than those received on time, maintaining confidence in the competitive system is of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. Silvics, Inc., B-225299, Feb. 24, 1987, 87-1 CPD ¶ 204.

In sum, JSA's proposal properly was rejected as late. The protest is dismissed.



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