



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wyatt and Associates

File: B-243349

Date: July 1, 1991

Mary Bunting Wyatt, Esq., for the protester.
John B. Shumway, Esq., and Kenneth A. Markison, Esq.,
Department of Housing and Urban Development, for the agency.
David Hasfurther, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest fails to state valid basis of protest where the paramount cause of the late submission of proposal was the protester's failure to allow sufficient time for timely delivery of its proposal.

DECISION

Wyatt and Associates protests the Department of Housing and Urban Development's (HUD) rejection as late of its proposal, under request for proposals (RFP) No. DU100C91006677, to conduct investigations of discrimination complaints filed by HUD employees. We dismiss the protest. 4 C.F.R. § 21.3(m) (1991).

The RFP provided that proposals were to be submitted to Room 5252 of the HUD building in Washington, D.C. by 2 p.m. on February 12. The RFP also provided that proposals submitted after the 2 p.m. deadline would not be considered. According to Wyatt, three Wyatt employees entered the HUD building with Wyatt's proposal at 1:50 p.m. Another person--at the security desk who did not appear to understand the sign-in procedures--was almost finished signing in. However, rather than permitting Wyatt's employees to sign in immediately after that person, the guard, even after being advised that Wyatt had to submit a proposal by 2 p.m., continued a previously begun exchange with that person regarding the sign-in procedures. After the conclusion of that exchange, the guard proceeded with signing in Wyatt's personnel. The guard requested more identification than a driver's license from the Wyatt employees, before finally accepting a driver's license only. One Wyatt employee signed in at 1:55 p.m. This employee went

to deliver the proposal, while the other two employees signed in at 2 p.m. The first Wyatt employee arrived in the location for proposal submission at 2:05 p.m. After advising the Wyatt employee that the proposal would be considered late, the contract specialist accepted the package at 2:10 p.m.

Wyatt argues that its proposal should be considered notwithstanding its late submission since the security guard for the HUD building was the paramount cause of the untimely submission. Wyatt contends that the security guard's conduct went well beyond what can be reasonably considered normal and acceptable conduct for a government employee at an agency engaged in "time sensitive" business with the general public and can be considered only as a deliberate attempt to make Wyatt miss the submission deadline. While Wyatt states it is responsible for anticipating the delay that will result if a number of people were waiting at the sign-in desk, if an insufficient number of guards were on duty to handle sign-ins, if elevators were broken or slow, as well as other possible delaying circumstances, it is not responsible for willful and malicious actions of a government employee as occurred here. The security guard's delays, Wyatt concludes, rather than anything Wyatt did or failed to do, were what caused the late submission.

The agency argues that the guard's actions, explaining the sign-in procedures to the person in line before Wyatt and requesting two sources of identification from Wyatt personnel, appear reasonable and were not extraordinary and unforeseeable events, but were instead within the normal course of the guard's duties. The agency states that security had been tightened at federal buildings due to the Persian Gulf crisis. In any event, it concludes, even if it might be argued that the guard's action partially caused the late submission, the protester significantly contributed to the late submission by unreasonably arriving at HUD at the last possible moment and by allowing no margin for error or delay in delivering the proposal.

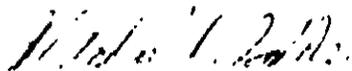
As a general rule, an offeror has the responsibility of assuring the timely arrival of its proposal at the place designated in the solicitation. However, a hand-carried offer that is received late may be accepted where improper government action was the paramount cause for the late delivery, and the integrity of the procurement process would not be compromised by acceptance of the offer. St. Charles Travel, B-226567, June 5, 1987, 87-1 CPD ¶ 575.

Here, we find that Wyatt, which had the primary responsibility for delivering its proposal in time, significantly contributed to the late delivery by not allowing enough time to permit a timely submission, and that this contribution was the

paramount cause of the untimely proposal submission. Gull's, Inc., B-232599, Jan. 25, 1989, 89-1 CPD ^c 74.

Wyatt admits that it arrived at the HUD building at 1:50 p.m., thus giving it exactly 10 minutes to sign in, satisfy security procedures, and make the delivery. After Wyatt's one employee signed in at 1:55 p.m. and then left to deliver the proposal following the guard's acceptance of a driver's license as sufficient identification, it took Wyatt's employee approximately 9 minutes to deliver Wyatt's proposal at 2:05 p.m. Since the Wyatt employee took approximately 9 minutes to reach the proposal submission location once signed-in, where the Wyatt employee presumably was acting diligently, we do not think allowing approximately 1 minute for sign-in and security procedures, as Wyatt appears to have allowed, is reasonable. Given the time that would have been required to sign Wyatt's employee in under the best of circumstances, we cannot conclude that it would be reasonable to impose an obligation on the HUD security guard to have signed Wyatt's employee in, including verifying identification, within about 1 minute--the amount of time that would have been required to accomplish the timely submission of Wyatt's proposal--after Wyatt's 1:50 p.m. arrival time. Thus, we find that Wyatt significantly contributed to the late receipt of its offer by not allowing sufficient time to ensure timely delivery of its hand-carried offer.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel