



Comptroller General  
of the United States

Washington, D.C. 20548

15:213

## Decision

**Matter of:** Einhorn Yaffee Prescott

**File:** B-259552

**Date:** March 20, 1995

Lanny J. Davis, Esq., Timothy B. Mills, Esq., and Christy L. Gherlein, Esq., Patton Boggs, L.L.P., for the protester. Patricia S. Grady, Esq., Comptroller of the Currency, for the agency.

Katherine I. Riback, Esq., and Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against rejection of a hand-carried proposal received after the time set for receipt of proposals is denied where the late delivery was not caused by improper government action.

### DECISION

Einhorn Yaffee Prescott protests the rejection of its best and final offer (BAFO) as late under request for proposals (RFP) No. CC-94-R-0005, issued by the Comptroller of the Currency. Einhorn argues that its hand-carried BAFO was timely because it was delivered to the loading dock of the designated agency building 5 minutes before the time set for receipt, and if the BAFO nevertheless was delivered late to the appropriate delivery location, the lateness was the government's fault.

We deny the protest.

The RFP, issued on April 5, 1994, solicited offers for architectural and engineering services. The solicitation directed offerors to deliver hand-carried proposals to the Office of the Comptroller of the Currency (OCC) reception desk, which is on the ground floor of the building where the agency is located. The solicitation cautioned offerors that it is their responsibility to allow themselves enough time to gain access to the appropriate location and to deliver their proposal by the time specified in the solicitation. Initial proposals were received on May 5. By letter of August 31, the agency notified Einhorn that its initial

proposal was included in the competitive range, and that the date for receipt of BAFOs was September 20. As a result of an increase in the estimated maximum quantities required under the solicitation, the agency issued an RFP amendment on November 7, which notified offerors of the increased quantities and requested a second round of BAFOs. The time and date set for receipt of the second BAFOs was November 21 at 1 p.m. On November 21, beginning at 12:40 p.m., the contract specialist waited at the OCC reception desk for "last minute" BAFO submissions. During her wait, no BAFOs were received.

Einhorn used a messenger service to deliver its BAFO. The messenger carrying Einhorn's BAFO had made multiple deliveries to the OCC building in the past and was aware that OCC security procedures generally require that commercial carriers make deliveries through the OCC loading dock. Accordingly, Einhorn's messenger went directly to the OCC loading dock area, and arrived there at 12:55 p.m. The messenger, using a telephone located on the outside of the building, called the mailroom and informed a mailroom employee that he was outside with a delivery. The messenger states that, in his experience, it normally takes 1 to 3 minutes for a mailroom employee to come out and pick up the delivery.

While waiting, the messenger knocked on the loading dock door and was let in by a person, not an employee or agent of the OCC, who was also waiting inside on the loading dock. That other person was apparently also a courier. Einhorn's messenger waited inside the building on the loading dock for "a couple of minutes."

At approximately 1 p.m., Einhorn's messenger went back outside to the telephone to call the mailroom again. While he was outside, a mailroom employee came to the loading dock to accept a package from the other courier. The mailroom employee states that she saw no additional couriers on the loading dock at the time she picked up the 1 p.m. delivery.

After placing his second call to the mailroom, Einhorn's messenger went back inside and waited on the loading dock for a mailroom employee to come out and pick up his delivery. By this time both the mailroom employee and the other courier had gone. At 1:05 p.m., another mailroom employee came out onto the loading dock and picked up Einhorn's BAFO. Both the agency's log and the messenger's manifest show the time of receipt as 1:05 p.m.

The agency informed Einhorn that its BAFO was received late and, therefore, would not be considered. On December 2, Einhorn protested to our Office.

Einhorn contends that its BAFO was delivered before the 1 p.m. closing time, because it was in OCC's loading dock at 12:55 p.m. Alternatively, Einhorn argues that if its BAFO was, in fact, delivered late, the government is primarily at fault because the agency did not have adequate procedures in place to ensure timely receipt of BAFOs at the OCC loading dock.

The offeror has the responsibility for timely delivering a hand-carried proposal to the correct location and personnel within an agency. See Resource Analysis, Inc., B-202920, May 26, 1981, 81-1 CPD ¶ 410. Whether a hand-carried proposal is late is measured by its time of arrival at the appropriate office (usually the office designated in the solicitation), not by its time of arrival at some central receiving area in the building. Occu-Health, Inc., B-250043, Oct. 30, 1992, 92-2 CPD ¶ 314.

Here, while the solicitation stated that hand-carried proposals were to be delivered to the OCC reception desk, the agency also accepted proposals hand delivered by commercial carriers to mailroom personnel at the loading dock. For messengers using the loading dock, time of delivery was measured by the receipt of the proposal by mailroom personnel since, as Einhorn's messenger knew, it was those personnel who were required to receive and log in the delivery. It is irrelevant that Einhorn's messenger may have been inside the OCC building before the 1 p.m. deadline for BAFOs. What is relevant is that, by Einhorn's own admission, the mailroom employee did not receive the BAFO until 1:05 p.m.--5 minutes after the time set for submission.

A late proposal may be considered where improper government action was the paramount cause for the late submission, and consideration of the proposal would not compromise the integrity of the competitive procurement process. See Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. Improper government action in this context is affirmative action that make it impossible for the offeror to deliver the proposal on time. Id. In determining whether that standard is met, we take into account whether the offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Id.

We cannot conclude that improper government action caused the late delivery here. To begin with, the offeror's messenger's action in attempting to make the delivery only 5 minutes before the time deadline was the paramount cause of the lateness. Further, it is undisputed that an agency mailroom employee was on the loading dock at 1 p.m. That mailroom employee did not receive Einhorn's BAFO because

Einhorn's messenger had gone outside to call the mailroom a second time. If the messenger had remained on the loading dock until 1 p.m., Einhorn's BAFO would have been timely received. In light of the circumstances, as described above, the agency's actions did not cause the later delivery.

The protester argues that it took the mailroom personnel too long to respond to the messenger's call. We disagree. The argument assumes that 10 minutes passed before a mailroom employee arrived on the loading dock (at 1:05 p.m.), when in fact one appeared after 5 minutes (at 1 p.m.). Whatever may be said of a 10-minute wait, a 5-minute delay is not unreasonable, and Einhorn assumed a risk in allowing so little time for delivery, particularly when the solicitation stated that offerors should allow adequate time to deliver their proposals to the appropriate location within the building. We have recognized that delays in gaining access to government buildings are not unusual and should not be unexpected. Vikonics, Inc., supra.

The protest is denied.

  
For Robert P. Murphy  
General Counsel