



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Secure Applications, Inc.

File: B-261885

Date: October 26, 1995

John L. Hurley, Jr., for the protester.

Richard A. Couch, Esq., and David H. Scott, Esq., Department of the Army, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Late receipt of protester's proposal was not due to government mishandling where: (1) offeror failed to identify its submission as a proposal and otherwise failed to mark the submission with an identifying solicitation number or closing date deadline and time; and (2) offeror allowed only 1 day for delivery.

DECISION

Secure Applications, Inc. (SAI) protests the rejection of its proposal as late under request for proposals (RFP) No. DAAD05-95-R-9023, issued by the Department of the Army for a perimeter and internal security system at the Special Operations Training Facility, Fort Bragg, North Carolina. SAI contends that its proposal should not have been rejected since government mishandling prevented it from being timely delivered to the contracting officer.

We deny the protest.

According to the terms of the RFP, all initial proposals were required to be submitted by 12 p.m. on Friday, June 23, 1995, to the following address:

"Directorate of Contracting
ATTN: STAEP-PR-R
Ryan Building
Room 119
APG, MD 21005-5001."

The record shows that on Thursday, June 22 at 10:29 a.m., SAI mailed its proposal from a United States Postal Service (USPS) New Hampshire post office via the Express Mail Next Day Service delivery method.

On Friday, June 23, at 9:05 a.m.–the morning of the closing date–the USPS delivered SAI's proposal to the Aberdeen Proving Ground USPS post office. At 10 a.m., the Aberdeen USPS transferred the SAI package to the Directorate of Information Management (DOIM)–which is the Army's *de facto* mail room, located in the same building as the Aberdeen USPS post office.

The record shows that the DOIM routinely makes two mail deliveries per day: a morning mail distribution at 9:30 a.m., and an afternoon mail distribution at 1:30 p.m. Because the DOIM mail clerk received SAI's package from the Aberdeen USPS after DOIM had conducted its routine 9:30 a.m. mail delivery run, the DOIM mail clerk did not deliver SAI's proposal to the Directorate's office until approximately 1:30 p.m.–as part of the afternoon mail delivery run. As a result, because the SAI proposal was not received until after the scheduled 12 p.m. closing time, the contracting officer rejected SAI's proposal as late.

In its protest, SAI contends that the cause of the Army's late receipt of its proposal was mishandling by the government. SAI maintains that its proposal would have been submitted to the contracting officer by the scheduled 12 p.m. closing time if the DOIM mail clerk had not delayed delivery of SAI's package until the routine 1:30 p.m. afternoon mail run. As a result, SAI contends that the Army should consider SAI's late proposal since the DOIM mail clerk–and not SAI–delayed the proposal's prompt delivery.¹ In this regard, while Federal Acquisition Regulation (FAR) § 52.215-10 (which was incorporated in the RFP) generally prohibits consideration of proposals which are received late, this regulation does permit an agency to accept a late proposal where "the late receipt was due solely to mishandling by the [g]overnment after receipt at the [g]overnment installation." FAR § 52.215-10(a)(1).

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires that a proposal be rejected. Alpha Technical Serv., Inc., B-243322; B-243715, July 15, 1991, 91-2 CPD ¶ 56. In cases where the "government mishandling" exception is to be applied, a proposal which arrives late can only be considered if it is shown that the sole or paramount reason for the late receipt was government impropriety. Id.; Southeastern Enters., Inc., B-237867, Mar. 21, 1990, 90-1 CPD ¶ 314. In determining whether that standard

¹To the extent SAI suggests that any delay by the USPS constituted government mishandling, we note that government mishandling only occurs when: (1) it is action attributable to the procuring agency; and (2) when the mishandling action took place after a proposal's receipt at the government installation. Late delivery by the USPS does not satisfy either of these conditions. Austin Telecommunications Elec., Inc., B-254425, Aug. 19, 1993, 93-2 CPD ¶ 108.

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. Einhorn Yaffee Prescott, B-259552, Mar. 20, 1995, 95-1 CPD ¶ 153.

In this case, we conclude that the protester's own actions were the paramount cause for the late delivery of its proposal to the contracting officer. First, SAI did not mail its proposal until 1 day prior to the due date. Second, although the RFP incorporated FAR § 52.215-9, which requires each offeror to submit its proposal in a sealed envelope or package addressed to the office specified in the RFP, and indicating the time specified for receipt and the solicitation number, SAI failed to include this information on the outside of its proposal package.² Consequently, although the name and address of the Directorate appeared on the envelope, there was no marking on SAI's package which would have alerted a mail clerk to expedite delivery of the package. See Bill Strong Enters., Inc., B-260721, July 10, 1995, 95-2 CPD ¶ 10; International Creative and Training, Ltd., B-258543, Jan. 27, 1995, 95-1 CPD ¶ 44.

In its comments on the agency report, the protester argues that its proposal should be considered in any event because unlike in sealed bid situations, acceptance and consideration of late proposals does not compromise the integrity of the procurement process because, typically, offerors' proposals are subject to further negotiation and evaluation--and are not disclosed to the public, as in the case of a sealed bid opening.

The purpose of the late proposal rule is to assure equal treatment of all offerors, and prevent one offeror from obtaining any unfair competitive advantage that might

²Because this procurement required the construction of a top secret security system, the solicitation provided that the successful contractor would be required to follow various classified security procedures during the construction of the system. One of these procedures provided that all information transmitted to and from the construction site would have to be transported in an unmarked envelope--with only the name of the recipient person identified on the outer seal. In its comments on the protest, SAI contends that this solicitation language caused it to conclude that these classified document procedures applied to the submission of its proposal and as a result, SAI did not identify its proposal with the solicitation number or closing date or time deadline. We find this argument patently unreasonable. Clearly, as evidenced by the plain terms of the RFP--as well as the sample envelope contained in the RFP which illustrated how an envelope transmitted to the construction site was to be marked--these security procedures only applied to documentation transmitted to and from the Fort Bragg, North Carolina site, not the Aberdeen procurement site.

accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors—for example, the consideration of changed circumstances or the improper disclosure of information concerning other offerors. The Marquardt Co., B-224289, Dec. 9, 1986, 86-2 CPD ¶ 660. While the government's application of the late proposal rules sometimes may seem harsh, and the government may lose the benefit of proposals that offer terms more advantageous than those that were timely received, protecting the integrity of the procurement process by ensuring that fair and impartial treatment is guaranteed and maintaining confidence in the competitive system are of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. See Inland Serv. Corp., Inc., B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266.

Because the protester did not adequately identify its mailed package as a proposal designated for a particular solicitation, closing date, or time, and also failed to allow adequate time to ensure timely receipt by the contracting officer, we conclude that the Army properly rejected SAI's proposal as late.

The protest is denied.

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