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Decision

Matter of: ConnectUP et al; Labasa LLC; SOFX Inc.

File: B-423557; B-423557.2; B-423557.3

Date: August 12, 2025

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DIGEST

Protests challenging agency's decision to reject the protesters' proposals as late is denied where the project demonstration models required to be submitted with the proposals were not timely received by the agency in a manner consistent with the terms of the solicitation.

DECISION

ConnectUP, a service-disabled veteran-owned small business (SDVOSB) of Baltic, Connecticut; Labasa LLC, a SDVOSB of Denville, New Jersey; and SOFX, Inc., a SDVOSB of Charleston, South Carolina protest the rejection of their proposals submitted in response to request for proposals (RFP) No. SPE1C1-R-0075, issued by the Defense Logistics Agency (DLA) for cold weather trousers. The agency rejected the protesters' proposals on the basis that their product demonstration models (PDMs) were not received by the submission deadline, as required by the RFP. The protesters argue that the late delivery was due to government mishandling or interference because the solicitation instructions failed to explain the security access requirements necessary for proposal delivery, and the agency unreasonably declined to assist the commercial carrier when it was restricted from delivering the packages.

We deny the protests.

On March 28, 2025, the agency issued the solicitation as a set-aside for SDVOSBs for the purchase of "Gen III Layer 7 Extreme Cold Weather Trousers" under Federal Acquisition Regulation (FAR) part 15. Agency Report (AR), Exh. 2, RFP amend. 0001

at 2, 5. The solicitation contemplated award of a fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract to the offeror¹ that demonstrated the “greatest probability of success and that will perform in a manner which will best meet the Governments’ stated requirements.” *Id.* at 2. In its evaluation, the agency would consider the following factors in descending order of importance: (1) PDMs; and (2) past performance confidence assessment.² See AR, Exh. 1, RFP at 70-71.

The solicitation required submission by 3:00 p.m. Eastern time on April 28 of proposals *via* email and PDMs delivered to:

DLA Troop Support
ATTN: Tiffany Taylor
Bldg. 3-A-4422
700 Robbins Avenue
Philadelphia, PA, 19111³

Id. at 1-2 (emphasis omitted). As relevant here, the solicitation advised offerors that “only [United States Postal Service (UPS)], [United Parcel Service (UPS)] and FedEx [Corporation] are authorized to make deliveries.” *Id.* at 2. The solicitation also stated that “[i]t is solely the offerors responsibility to ensure its product demonstration models . . . are received on time.” *Id.*

On April 24, five days before the deadline for proposal and PDM submission, the protesters’ designated manufacturer of the PDMs utilized UPS to send each protester’s respective PDM *via* overnight delivery for arrival on April 25.⁴ Due to severe weather conditions, UPS did not attempt to deliver the PDMs on April 25 as intended. Protest at 3⁵; Comments at 1; See AR, Exh. 4, UPS Tracking Records. UPS next attempted

¹ While the RFP refers to “vendors” in several places in the solicitation, given this was issued as an RFP, we use the term “offeror” throughout the decision.

² A separate price proposal was not required with initial proposals, but offerors had to provide prices for four different tiers of orders, as identified in the solicitation. RFP at 7, 74.

³ The agency explains that this DLA Troop Support address is located on the naval support activity in Philadelphia and that the naval support activity manages the installation and security of the installation. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 4.

⁴ All three protesters used the same designated manufacturer for the PDMs and relied on this manufacturer to ship the PDMs to the agency. Protest at 2.

⁵ ConnectUP filed the B-423557 protest on behalf of itself, Labasa LLC, SOFX Inc., and a fourth company. On May 29, our Office informed ConnectUP that we had opened the protest on behalf of ConnectUP but that a separate protest and filing fee needed to be filed on behalf of any other protester. In response, counsel for ConnectUP filed

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delivery on April 28 at 9:12 a.m.; however, the protesters explain that the security guard at the delivery location did not permit UPS to deliver the PDMs to the final delivery destination because the delivery driver was not “personally authorized to make deliveries on base.” Protest at 3; See AR, Exh. 4, UPS Tracking Records. The record demonstrates that the protesters, who were notified of the failed delivery attempt by the manufacturer, “immediately advised the agency” of the incident and requested assistance from the agency to ensure delivery was made to the stated location before the deadline. Protest at 3. The protesters explain that the agency declined to facilitate delivery of the packages. *Id.* Ultimately, UPS tracking records list the time of delivery of the PDMs for all three protesters as 10:24 a.m. on April 29, one day after the deadline. AR, Exh. 4, UPS Tracking Records; See RFP at 1.

On May 16, the agency informed the unsuccessful offerors that it rejected the proposals as late because the PDMs were received after the submission deadline. See COS/MOL at 5. On May 23, the three protesters filed their protests at GAO.

DISCUSSION

The protesters challenge the agency’s rejection of their proposals as untimely where the security guard did not allow the UPS delivery driver, who did not have appropriate security credentials, to deliver the PDMs to the final delivery location. Protest at 2. The protesters argue that the PDMs were not timely delivered due to agency interference and mishandling because the solicitation instructions did not inform offerors that there were security requirements necessary for delivery drivers to access the final delivery location. *Id.* at 3. The protesters also contend that once the agency was notified that the delivery was restricted by the security guard, the agency should have facilitated delivery of its proposals. *Id.* at 3-4.

The agency responds that it did not interfere with or mishandle delivery of the PDMs and its decision to reject the protesters’ PDMs as late was reasonable and consistent with the solicitation. COS/MOL at 6-7. The agency maintains that it was the protesters’ responsibility to ensure the PDMs were delivered on time. *Id.* at 8-9. For the reasons explained below, we agree with the agency and deny the protests.

Solicitation Instructions

The protesters argue that the agency interfered with or mishandled delivery of the PDMs because the agency failed to include “special access requirements” related to the

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separate protests for Labasa, LLC and SOFX, Inc. but notified our Office that the fourth company would not be pursuing its protest. Because all three protesters were represented by the same counsel and raised the same argument, we consolidated the three protests. In this decision, we cite to the initial protest submitted on behalf of ConnectUP, filed as B-423447.

PDM delivery instructions in the solicitation. Protest at 3-4; Comments at 3-4. The protesters contend that had the agency included this information, “offerors would have been on notice” not only of the requirement to use certain commercial carriers such as UPS, but to also ensure the selected carrier would be authorized to access the final delivery location. Comments at 4. Furthermore, the protesters explain that they provided a “cushion of time” of four days for PDM shipment and selected overnight delivery to account for unanticipated circumstances such as severe weather delays. Protest at 4. The protesters attribute delivery delays to the agency’s “own negligence” when the agency failed to include clear solicitation instructions.⁶ Protest at 4; Comments at 4.

The agency asserts that its decision to reject the protesters’ PDMs as untimely is consistent with the solicitation and the FAR. COS/MOL at 1-2. The agency contends it included a “designated government address and submission deadline for delivery” and that it was not required to include “every detail regarding internal delivery procedures within a solicitation.” *Id.* at 7. Moreover, the agency contends that delays in access are to be expected and that it was the UPS driver that failed to hold the appropriate credentials required to make the delivery. *Id.* at 7-8. Ultimately, the agency argues that it was UPS, the protesters’ agent, that caused the late delivery. *Id.* at 9.

It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time. *Cla-Val Company*, B-418443, May 13, 2020, 2020 CPD ¶ 170 at 4; *O.S. Systems, Inc.*, B-292827, Nov. 17, 2003, 2003, CPD ¶ 211 at 3. Moreover, in addressing protests challenging an agency’s rejection of late proposals, we have noted that delays in gaining access to government facilities are not unusual and should be expected. See *U.S. Aerospace, Inc.*, B-403464, B-403464.2, Oct. 6, 2010, 2010 CPD ¶ 225 at 11 n.17.

⁶ In their comments on the agency report, the protesters identify for the first time an unrelated solicitation issued by the same DLA division with more detailed delivery instructions that required carriers to utilize specific biometric identification for base access. The protesters contend this supports their argument that the agency in this procurement withheld critical proposal delivery instructions. See Comments at 3-4. In this regard, the protesters argue that the agency should have amended the solicitation here to include the same level of detail. *Id.*

Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CORMAC Corp.*, B-421532, B-421532.2, June 14, 2023, 2023 CPD ¶ 142 at 4-5 n.8. We will dismiss a protester’s piecemeal presentation of arguments that could have been raised earlier in the protest process. *Id.* Here, because the unrelated solicitation was issued on April 9, 2025, and therefore available to the protesters prior to when they filed their protests on May 23, the protesters could have raised this argument in their initial protests. Accordingly, we dismiss this argument as a piecemeal presentation of protest grounds.

Although the late proposal rule may seem harsh, it alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage. See *Metters, Inc.*, B-403629, Nov. 10, 2010, 2010 CPD ¶ 273 at 3; see *Inland Service Corp., Inc.*, B-252947.4, Nov. 4, 1993, 93-2 CPD ¶ 266 at 3. To establish that government impropriety during or after receipt at the government installation was the sole or paramount cause of the late receipt of a proposal, an offeror must first establish that it did not significantly contribute to the late delivery by not allowing enough time to permit a timely submission. *CCSC, Inc.*, B-404802.3, July 18, 2011, 2011 CPD ¶ 187 at 5; *Wyatt & Assocs.*, B-243349, July 1, 1991, 91-2 CPD ¶ 5 at 2-3. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. *CCSC, Inc.*, *supra* at 5; *Lani Eko & Co., CPAs, PLLC*, B-404863, June 6, 2011, 2011 CPD ¶ 118 at 3.

In *CCSC, Inc.*, the protester's proposal was rejected as late in part because delivery of the proposal was delayed by the security screening process at the delivery location. *CCSC, Inc.*, *supra* at 2-4. The protester argued that there was improper government action because the "paramount cause" of the late delivery was that the RFP delivery directions failed to make offerors aware of these security screening processes. *Id.* at 5. We rejected this argument and found that the protester should have expected delays due to security screening and that the protester failed to show that the "agency's mail screening policy was the primary cause of the late proposal submission." *Id.* at 7. Instead, we concluded that the protester "failed to take reasonable steps to ensure timely delivery." *Id.* at 8. We reach the same conclusion here.

While the protesters argue that the agency was negligent when it failed to include clear access instructions for delivery, on this record we find that the solicitation instructions for PDM delivery were sufficient. As stated above, the solicitation provided the address for PDM delivery and the deadline. See RFP at 1-2. Thus, the protesters had sufficient information to deliver their PDMs in a timely manner. Instead, we find that it was the protesters' own actions, namely the decision to ship the PDMs only four days⁷ before the proposal deadline, as the primary reason for their late proposal deliveries. See Protest at 4. As noted, there were adverse weather conditions that contributed to the shipment delays. Protest at 3. Furthermore, the record demonstrates that the common carrier selected to deliver the PDMs was aware that its driver with access credentials was not working on the day delivery was attempted and advised the protesters' manufacturer that the driver would be available to complete delivery the next day, April 29, one day after the proposal deadline. AR, Exh. 5.1, Email from UPS to Protesters' Designated Manufacturer, Apr. 28, 2025, at 3. Moreover, the delivery address was a government naval facility and therefore offerors should have been on notice of the possibility for delays in gaining access to the final delivery location.

⁷ We note that two of the four days fell on Saturday and Sunday, leaving only two business days for delivery before the proposal deadline. See Protest at 4.

Because the protesters shipped the PDMs only four days before the proposal deadline, the protesters assumed the risk in the event of unforeseen delays, such as adverse weather conditions and the absence of available drivers with required security credentials. On this record, the protesters have not established that the RFP's absence of the installation's security procedures was a form of government impropriety that caused the late delivery of their PDMs. *CCSC, Inc., supra* at 5,7. Instead, as described above, the protesters failed to take reasonable steps to ensure timely delivery. As a result, the agency's decision to reject the proposals as untimely is reasonable. Accordingly, this protest ground is denied.

Request for Agency Assistance

As stated above, the protesters contend that the agency interfered with delivery because it was obligated to facilitate proposal delivery when the UPS driver was prevented access by the security guard to deliver the PDMs. Protest at 4-5; Comments at 6. In this regard, the protesters explain that the contracting officer was "on very specific notice that the PDM packages were at the agency gate." Comments at 5. The agency states that "the [a]gency had no duty to attempt to circumvent base security protocols and, in fact, affirmative action by the [a]gency would be improperly advancing certain [offerors] over others." COS/MOL at 11. We agree with the agency.

To provide special treatment to the protesters by facilitating proposal delivery to meet the proposal deadline would have been unfair to offerors who timely shipped PDMs for delivery. See *Inland Service Corp., Inc., supra* at 3. To ensure that the agency acted impartially, the agency reasonably declined to assist the protesters here where the delivery driver lacked the required security credentials for access. The protesters have not provided any support for their contention that the agency was required to facilitate delivery or that its refusal to do so constituted government interference or mishandling. Consequently, we find the agency acted reasonably when it declined to facilitate proposal delivery and deny this protest ground.

The protests are denied.

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General Counsel