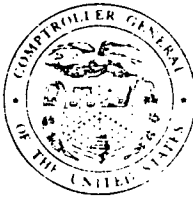


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

40927

FILE: B-181052

DATE: July 10, 1974

95263

MATTER OF: Jack Faucett Associates

DIGEST: Proposal which was delivered at 5:40 p.m., April 4 when RFP stated proposals would be received until 4:00 p.m., April 4, was properly rejected as late pursuant to FPR 1-3.802-1 which defines the three instances in which late proposals may be accepted, none of which is applicable here.

Jack Faucett Associates (Faucett) has protested the rejection of its late proposal under request for proposals (RFP) DOT-FR-3007 issued by the Federal Railroad Administration (FRA).

The RFP stated that offers would be received "until 4:00 p.m., local time, Washington, D.C., April 4." Faucett's proposal was delivered to the FRA at 5:40 p.m. on April 4, 1974, and was determined to be a late proposal and ineligible for award consideration pursuant to Part 6 of the RFP which reads, as follows:

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

- (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);
- (2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) It is the only proposal received.


These provisions are derived from section 1-3.802-1 of the Federal Procurement Regulations (FPR).

Faucett argues that since no public opening of bids is involved rejection of his proposal is too restrictive an interpretation of the regulation and serves no useful purpose while depriving the Government of possible benefits contained in its proposal. Also, Faucett contends that "close of business" may just as well be "before opening of business" the next day.

Regarding the "close of business" argument, the RFP stated that the time for proposals to be submitted was 4:00 p.m., not close of business and therefore, the stating of the exact time in the RFP makes the requirements of FPR 1-3.802-1 mandatory.

Concerning the contention that to reject Faucett's proposal is too strict an interpretation of the regulations, our Office is of the view that the negotiated system of procurement is strengthened by adhering to the solicitation advice that only proposals received before the time stated would be for consideration unless the listed exceptions are applicable. Moreover, we consider it to be within the prerogative of the procurement activity to impose rules as to the handling of late proposals and to adhere strictly to those rules in circumstances wherein the rules do not permit a deviation from their effect. We see no reason to object to the FRA's refusal to consider the late proposal in view of the specific regulation embodied in the solicitation. While compliance with the late proposal provisions might appear to be unduly harsh in certain instances, relaxation of the limitation would create confusion and unequal treatment.

Therefore, the protest is denied.


Deputy Comptroller General
of the United States