

DOCUMENT RESUME

03269 - [A2233349]

[Request for Consideration of Late Proposal]. B-188941. August 8, 1977. 4 pp.

Decision re: Jerry Warner & Associates; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Regional Procurement Office, Washington, DC.

Authority: A.S.P.R. 3-506. B-186907 (1976). B-185919 (1976).

B-175483 (1972). B-173593 (1971). B-186292 (1976). B-181204

(1974). B-188354 (1977). E-188321 (1977). 49 Comp. Gen. 733.

55 Comp. Gen. 754.

The protester objected to the determination that its late proposal could not be considered for award. The proposal, which was received two days after the closing date specified in the request for proposals, was properly rejected since the delay was attributable to the Postal Service rather than to mishandling at the Government installation. The offeror's allegedly superior experience and skills are not reasons to consider a late proposal. (Author/EC)

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**DECISION**

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

**FILE: E-188941**

**DATE: August 8, 1977**

**MATTER OF: Jerry Warner & Associates**

**DIGEST:**

Proposal which was received two days after closing date specified in RFP was properly rejected where delay was attributable to Postal Service rather than mishandling at Government installation. Offeror's allegedly superior experience and skills are not reasons to consider late proposal.

Jerry Warner & Associates (Warner), has protested a determination by the Naval Regional Procurement Office (NRPO), Washington, D.C., that its late proposal for script preparation and production of a 27-minute documentary film on Naval aviation may not be considered for award.

Warner concedes that its proposal was not submitted by registered or certified mail at least five days before the date specified for receipt of proposals, but requests that our Office consider what it believes were extenuating circumstances and waive the regulations which prohibit consideration of late proposals submitted in any other manner.

Request for proposals (RFP) No. N00600-77-R-0746 was issued on March 4, 1977 by NRPO; it stated that proposals would be received until 4:30 p.m. Eastern time on Monday, April 4, 1977. On Saturday afternoon, April 2, 1977, Mr. Warner states, his secretary called a nearby contract postal station located in Van Nuys, California, shopping center and was told that 24-hour, guaranteed mail service was available at that station. Upon arrival at the station, Mr. Warner found a substitute clerk, not familiar with such service, who stamped the package and set it aside, advising him to check with the Postal Service employee

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who would pick up the mail regarding time required for delivery to Washington.

According to Mr. Warner, he and the clerk agreed that if delivery by Monday afternoon was not possible, he would be able to retrieve the package and send it by air via some other carrier. When the Postal Service employee came to pick up the mail, however, the station had been closed and the substitute clerk had disappeared. Mr. Warner called attention to his package, still inside. After first refusing to reopen the station, the postman took the package and, despite an apparently angry exchange, would not return it to Mr. Warner.

The proposal, a notation on the wrapper shows, was not received at NRPO until 3:30 p.m. on Wednesday, April 6, 1977. Warner requested that it be accepted despite this, arguing that mailing on April 2, 1977 was "consistent with the purpose of solicitation closing provisions" in that it allowed application of "more than 45 man-hours additional preparation devoted to improved responsiveness and refined cost bases." In addition, Warner argued, the firm possessed "special experience and skills \* \* \* of such degree and extent that warrant reinterpretation of restrictive conditions of the RFP and/or extension of closing time." NRPO has rejected these arguments, but award is being delayed pending a decision by our Office.

Handling of late proposals is governed by Armed Services Procurement Regulation (ASPR) § 3-506 (1976 ed.), which states that offerors are responsible for submitting proposals so as to reach the designated Government office on time. In the RFP in question, offerors were cautioned that proposals received after the exact time specified, but before award, would be considered only in three instances:

"(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).

(ii) 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

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(11) it is the only proposal received."

None of these applies to the Warner proposal. A copy of the wrapper, included in the record, shows that it was sent by certified mail only two days before the date specified for receipt of offers. As for mishandling by the Government, a number of our decisions have specifically involved delays attributable to the Postal Service. We have not found such delays to be within this exception, which is interpreted to mean mishandling after receipt at the Government installation designated in the RFP. See 49 Comp. Gen. 733 (1970); D.M. Anderson Co., B-186907, August 3, 1976, 76-2 CPD 123; The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21; B-175483, May 24, 1972; B-173593, September 22, 1971. As for the last exception, seven other proposals were received on time.

Although Warner inquired about express mail, which if mailed before 5 p.m. is guaranteed to be delivered by 3 p.m. of the next business day, it is clear that Warner did not receive or pay for such service. Moreover, even if Warner had obtained express mail service or been able to retrieve the package and send it by air via another carrier, the proposal could not have been considered if it had been received late. Present regulations make no provision for proposals submitted by express mail, D.M. Anderson Co., supra, and in choosing to submit its proposal by any method other than those specified in the late proposal clause, Warner assumed the risk that it would be rejected if late. Young Engineering Systems, 55 Comp. Gen. 754 (1976), 76-1 CPD 96; Bertolotti Engineering Company, B-185292, June 16, 1976, 76-1 CPD 386; Emergence Research Institute, B-181204, August 23, 1974, 74-2 CPD 11.

Since Warner's proposal may not be considered under the late proposal clause, the issue becomes whether the provisions of that clause may be modified or waived. The rules regarding late bids have been applied even when delays were clearly due to conditions beyond the control of offerors, as, for example, the extremely severe weather in Buffalo, New York, during January, 1977, which for a time halted all air and ground transportation within and from that city. See Ecology and Environment, Inc., B-188354, June 15, 1977, 77-1 CPD 428; Falcon Research & Development Co., B-188321, May 4, 1977, 77-1 CPD 306. In these cases we upheld decisions of the procuring agencies not to extend closing dates for the benefit of one offeror and in Falcon, supra, held that the protester's unique approach and possible savings which the Government might realize were less important than maintenance of procurement standards insuring that all potential offerors would be treated equally.

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Similarly, modification or waiver of the provisions regarding late proposals to allow Warner extra time for preparation would be improper, regardless of the firm's special experience and skills or possible benefit to the Government.

Accordingly, the protest is denied.

*W. K. Sullivan*  
Deputy Comptroller General  
of the United States