

DECISION



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

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FILE: B-193655

DATE: April 4, 1979

MATTER OF: UBTL Division, University of Utah Research Institute

DG 01410

DIGEST:

[Protest DENIED as]

Proposal sent by commercial carrier and received after closing date for receipt of initial proposals is properly rejected by agency where reason for delay was breakdown of carrier's truck.

The UBTL Division, University of Utah Research Institute (Institute) protests the rejection by the Navy of its late proposal submitted in response to Request for Proposals (RFP) N00140-79-R-6017. We are denying the protest because there is no evidence that the late delivery is attributable to any Government action.

The proposal was delivered approximately 1 1/4 hours after the 2:30 p.m. deadline set out in the solicitation. The courier service responsible for the proposal's delivery advised the Institute that although its courier arrived at the Newport Naval Base prior to the deadline he was unable to gain timely access to the specified delivery site due to its location in a secured area of the base. The Institute thus contends that the solicitation ought to have instructed offerors on procedures for hand-delivering proposals within the secured area.

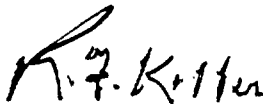
On the other hand, the record contains a statement from the courier himself that his truck broke down earlier in the day, and that as a result he did not arrive at the base until approximately 3:45 p.m., or well after the time specified for receipt of proposals. Thus, it appears that the late delivery was not caused by Government action nor was it the result of the solicitation's failure to specify procedures for hand-delivery of offers within the secured area of the base.

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The general rule followed by our Office is that a bidder or offeror has the responsibility for the delivery of its bid or offer to the proper place at the proper time, and late bids or offers must be rejected except under the exact circumstances specified in the late proposal clause (Defense Acquisition Regulation (DAR) § 7-2002.4 (1976 ed.)). Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425. That clause [DAR 7-2002.4, supra] provides three circumstances under which late proposals may be considered. Two of these circumstances concern late proposals delivered by registered, certified or regular mail prior to award while the third concerns situations where only one proposal is received. Because the Institute's proposal was sent by commercial carrier and was not the only proposal received, none of the circumstances which would permit consideration of a late proposal under the clause are applicable to the case.

We have, however, recognized an exception to the strict application of the late proposal clause when offers are hand-delivered by commercial carrier. In such circumstances, a late offer can be considered for acceptance where the sole cause of the late delivery is improper Government action, and if such consideration does not give the late offer an unfair advantage over other offers which are timely received. Scot, Incorporated, supra. In view of the courier's statements regarding the actual cause of the late delivery, it is not necessary to consider the question relating to the location of the office specified in the RFP for the receipt of proposals.

The protest is denied.


Deputy Comptroller General
of the United States