

Proc II

DECISION



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

10,229

196601611

FILE: B-194347

DATE: May 21, 1979

MATTER OF: Phelps-Stokes Fund

[PROTEST INVOLVING REJECTION OF LATE PROPOSAL]

DIGEST:

1. Proposal hand-delivered after time specified for receipt was properly rejected as late even though alleged delays were caused by unusually severe weather, unexpected traffic congestion, injury to key employee, and mishandling by U.S. Postal Service of portion of proposal sent by express mail to protester's representative.
2. Proposal delivered by hand after time specified for receipt cannot be considered on ground that proposal offers significant cost and/or technical advantages to Government since solicitation contained no provision for such consideration.

The Phelps-Stokes Fund (Phelps-Stokes) protests the rejection of its proposal under request for proposals (RFP) 79-12, issued by ACTION. The basis for the rejection was that the Phelps-Stokes proposal was received late. We believe the late proposal was properly rejected.

AG 00349

The record indicates that the closing date for receipt of proposals, as amended, was Friday, February 23, 1979. Phelps-Stokes claims that its proposal was late in arriving at ACTION because of Acts of God and other circumstances beyond the control of the protester which contributed directly to the late submission. First, a heavy snowstorm struck the Washington, D.C. area during the weekend preceding the due date and forced the Government to remain closed through Tuesday, February 20, 1979. Many ACTION employees remained absent on Wednesday, February 21 as a liberal

Builder eligibility
Late bids

005356

leave policy (Condition 2) was in effect. Phelps-Stokes maintains that its employee who was sent to Washington, D.C. to prepare the proposal lost two full days. The protester also states the U.S. Postal Service lost a major portion of its proposal despite the fact that it was sent by guaranteed express mail to the protester's representative in Washington, D.C. from Denver, Colorado on February 21, 1979. It required 12 hours to recreate the lost portion of the proposal by telecopying, telephone dictation, and manual transcription. In addition, a key Phelps-Stokes employee was involved in a near-fatal automobile accident on Saturday, February 17, 1979, and was wholly incapacitated until the closing date. Finally, the messenger who hand-carried the Phelps-Stokes proposal was delayed in reaching the ACTION office on the closing day due to "the monumental traffic jam in downtown Washington occasioned by the unannounced and illegal activities of the protesting farmers and their tractorcade." Phelps-Stokes maintains that fairness and equity dictate that the proposal not be rejected given the totality of adverse circumstances described above.

In the alternative, Phelps-Stokes argues that it probably would have met the deadline had it known that only an original proposal was required by the closing date and that the required copies could be furnished at a later time. Phelps-Stokes maintains that had this been known to it, it would have modified its reproduction and collation schedule giving it more time to deliver the proposal.

The protester also argues that its proposal offers "significant cost and/or technical advantages to the Government" and so qualifies for consideration, notwithstanding the fact its proposal was received late.

The RFP contained the following provision:

"LATE OFFERS AND MODIFICATIONS OR WITHDRAWALS

"(a) Offers * * * received at the office designated in the solicitation after the exact hour and date specified for receipt

will not be considered unless it is received before award is made; and

"(1) It was sent 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."

The late proposal clause contains no provision permitting acceptance of a late hand-delivered proposal. In this regard, we have consistently held that an offeror is charged with the responsibility of insuring that its proposal arrives on the proper date and time, and that by choosing methods of delivery other than those specified in the late proposal clause, an offeror assumes a high degree of risk that its proposal will be rejected if untimely delivered. Presnell-Kidd Associates, B-191394, (1978) April 26, 1978, 78-1 CPD 324; Federal Contracting Corp. et al., 54 Comp. Gen. 304 (1974), 74-2 CPD 229. Consideration of late proposals may be permitted only in the exact circumstances provided for in the solicitation. O.D.N. Productions, Inc., B-194312 April 13, 1979, 79-1 CPD ; Defense Products Company, B-185889 April 7, 1976, 76-1 CPD 233.

Here the protester presents a number of unanticipated events that significantly contributed to the delay in preparing and delivering its proposal. The RFP's late proposal clause, however, provides no grounds to consider a late proposal that is delayed for any of these reasons. See Jerry Warner and Associates, 57 Comp. Gen. 708 (1978), 78-2 CPD 146. For example, we have held this clause provides no basis to consider a

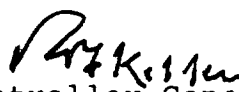
"a matter of form, established for the Government's convenience to expedite the evaluation of offers. For the Government to waive a solicitation requirement of this kind for an offeror which failed to comply works no prejudice to other offerors which did comply. See, in this regard, 40 Comp. Gen. 321, 324 (1960)." Computer Science Corporation, B-190632, August 4, 1978, 78-2 CPD 85.

Finally, with respect to the protester's contention that its proposal offers significant technical advantages to the Government and so should be considered notwithstanding the proposal's late delivery, the late proposal clause in this solicitation does not provide for consideration of proposals that offer significant cost or technical advantage to the Government. Although ACTION could have used the somewhat less restrictive alternative procedure set forth in FPR 1-3.802.2, which allows for consideration of late proposals offering significant cost or technical advantage to the Government, it is clear that this RFP contemplated strict adherence to the late proposal rules of FPR 1-3.802-1. Therefore ACTION could not consider Phelps-Stokes' late proposal on the basis that it contained significant technical advantages. New Jersey Department of Community Affairs, B-181100, May 29, 1974, 74-1 CPD 290.

While we realize that strict application of the late proposal clause and its attendant principles can lead ostensibly to harsh results, this must be viewed against the realization that relaxation of these standards would inevitably lead to confusion and unequal treatment of offerors. The manner in which the Government conducts its procurements must be subject to clearly defined standards that apply equally to all to ensure fair and impartial treatment. There must be a time after which hand-delivered offers may not be received. To permit one offeror to deliver its proposal after the closing date would tend to subvert the competitive system. By application of its late proposal rules, we realize that the Government may lose the benefit of a proposal that offers terms more advantageous than those

received timely; however, maintenance of confidence in the competitive system is of greater importance than the possible advantage to be gained by considering a late proposal in a single procurement. Data Pathing, Inc., supra.

For the reasons stated, Phelps-Stokes' protest is denied.


Deputy Comptroller General
of the United States