



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Logistics Management Resources, Inc.

File: B-276143

Date: May 15, 1997

Robert M. Cambridge, Esq., for the protester.

Major Michael J. O'Farrell, Department of the Army, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected a hand-carried proposal delivered after the time set for receipt of proposals where the protester did not allow reasonable time to ensure timely delivery of proposal to the designated location.

DECISION

Logistics Management Resources, Inc. (LMR) protests as improper the rejection of its proposal as late under request for proposals (RFP) No. DABT60-96-R-0010, issued by the Department of the Army, Army Training and Doctrine Command (TRADOC), for information processing support services. We deny the protest.

As amended, the RFP provided that the closing time and date for receipt of proposals was 1 p.m., January 30, 1997, at the designated agency issuing office or, if handcarried, to the depository located in Building 2798, TRADOC Contracting Activity, Fort Eustis, Virginia. The RFP incorporated by reference the then applicable late proposals clause at Federal Acquisition Regulation (FAR) § 52.215-10 (FAC 90-39), which generally provides that any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered. The clause also provides that the only acceptable evidence to establish the time of receipt at the government installation is the time/date stamp of that installation or other documentary evidence of receipt maintained by the installation.

The RFP provided that hand-delivered proposals were to be delivered to the depository in Building 2798. The agency's procedures called for acceptance by the secretary of the director of the contracting activity. It also is not disputed that there was a sign at the reception desk directing visitors to that workstation with an arrow pointing the way to that workstation.

LMR maintains that its proposal was timely delivered by two of its representatives to the place specified in the solicitation. However, in an affidavit furnished by one of the two representatives, this individual states that after "[he] opened the door and entered the reception area of Building 2798, [he] looked at [his] watch and turned to [the other representative] and told him that it was 1:00 p.m." They proceeded to the reception desk but no one was there and they did not see the signs indicating where visitors should go to deliver proposals.¹ One of LMR's representatives signed the log-in book located on the counter (the log-in book had no time-in/time-out block) and after waiting "several minutes" and calling out for assistance from agency personnel, the other LMR representative proceeded down the hallway to another workstation, which was the workstation of the secretary to the director. The secretary accepted the proposal package and gave the LMR representative a receipt stamped "30 Jan 97 1:07 PM." By letter of January 31, the agency informed LMR that its proposal was received late, and, therefore would not be considered.

In its protest, LMR contends that its proposal was submitted by the 1 p.m. closing time because the proposal was in Building 2798 at 12:57 p.m. In an affidavit submitted with its protest, LMR's representative states that on January 31, he checked the accuracy of his watch using the Naval Observatory master clock and discovered that his watch "was running three minutes fast."² Alternatively, LMR argues that if its proposal was, in fact, delivered late, the government is primarily at fault because the reception area in Building 2798 was unattended and there were no apparent signs indicating where in the building proposals were to be delivered.

The offeror has the responsibility for timely delivering a hand-carried proposal to the designated location and personnel within the agency. Spectronics Corp., B-260924, July 27, 1995, 95-2 CPD ¶ 47 at 2. By choosing a method of delivery other than those methods specified in the then applicable late proposals clause, an offeror assumes a high degree of risk that its proposal will be rejected if untimely delivered. Koba Assocs., Inc., B-265854, Nov. 8, 1995, 95-2 CPD ¶ 212 at 2. Whether a hand-carried proposal is late is measured by its time of arrival at the location designated in the RFP, not by its time of arrival at a reception area in the building. See Einhorn Yaffee Prescott, B-259552, Mar. 20, 1995, 95-1 CPD ¶ 153 at 3.

¹The agency has provided a statement from an agency procurement clerk which states that she repeatedly walked from the secretary to the director's workstation to the unmanned reception desk several times prior to 1 p.m. and saw no one at the desk at 1 p.m.

²On the other hand, the agency reports that the accuracy of its time/date stamp was verified on January 30 by using the local telephone company's time of day service.

As noted previously, the solicitation stated that hand-carried proposals were to be delivered to the depository in Building 2798 at the agency installation. In view of this express direction regarding where to submit proposals, it is irrelevant that LMR's representatives may have arrived at Building 2798 at 1 p.m or 12:57 p.m. (as verified by the protester the next day). What is relevant here is the agency's time/date stamp which indicated that LMR's proposal was delivered to the agency at 1:07 p.m.--7 minutes after the time set for delivery. Since the only acceptable evidence to establish the time of receipt at the installation is the time/date stamp or other documentary evidence of receipt maintained at the installation, we conclude that LMR's proposal was late. See Seer Publishing, Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181 at 5.

A late hand-carried proposal may be considered for award where improper government action was the sole or paramount cause for the late receipt. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Einhorn Yaffee Prescott, *supra*. In determining whether that standard is met, we consider whether the offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Id.

Here, under LMR's own account of the circumstances surrounding delivery of its proposal, LMR's representatives arrived at the building only 3 minutes prior to the time specified in the solicitation for delivery of proposals. Upon arrival, they did not see the sign at the reception desk directing visitors to the next workstation or the arrow pointing in the direction of that workstation. The record further indicates that the protester had not telephoned ahead to find out what procedures it should follow to make delivery once its representatives arrived at the building. Under these circumstances, we conclude that LMR's actions in leaving only a few minutes to effect delivery, in failing to seek specific delivery information in advance of their arrival, and in not noticing the posted sign and arrow were the paramount cause for the late delivery of LMR's proposal. Therefore, the agency's rejection of LMR's late proposal was proper.

The protest is denied.

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