



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Comspace Corporation

File: B-281067

Date: November 30, 1998

Irving Becker for the protester.

Walter R. Pierce, Esq., Defense Logistics Agency, for the agency.

Christina Sklarew, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as late a proposal sent by Express Mail 1 working day prior to the specified due date in an envelope designating an incorrect addressee, where the proposal was delivered to the government installation prior to closing time, but reached the proposal opening room late because it was routed by routine mail processing through the designated addressee.

DECISION

Comspace Corporation protests the rejection of its proposal as late by the Defense Logistics Agency (DLA) under request for proposals (RFP) No. SPO970-97-R-X113, issued by the Defense Supply Center Columbus (DSCC), a DLA field activity, for certain dynamic microphones.

We deny the protest.

The RFP required that sealed offers be submitted by 1 p.m. on Monday, September 15, 1997, and that offers be addressed to:

DEFENSE SUPPLY CENTER COLUMBUS
ATTN: DSCC-PBAA (Bid Opening RM B130, Bldg 20)
3990 E. BROAD STREET, P.O. BOX 16653
COLUMBUS, OHIO 43216-5009

On Friday, September 12, Comspace mailed its proposal by United States Postal Service Express Mail-Post Office to Addressee, in a package addressed as follows:

DSCC-ATTN: DSCC-PCCCGHX-V. Savory
3990 E. Broad St.-POB 16704
Columbus, Ohio 43216-5010

Sol. SPO970-97-R-X113
due 9/15/97 - Microphone, Dynamic

The RFP at section L incorporated by reference Federal Acquisition Regulation (FAR) clauses 52.215-9 (July 1995) and 52.215-10 (Aug. 1996). FAR clause 52.215-9 advises, among other things, that proposals must be submitted in sealed envelopes or packages addressed to the office specified in the solicitation, showing the time and date specified for receipt. Clause 52.215-10 provides, among other things, that any proposal received at the office designated in the solicitation after the exact time specified for receipt of proposals will not be considered unless it is received before award is made and, if it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing 2 working days prior to the date specified for receipt of proposals.

Comspace's proposal arrived in the DSCC mailroom at 8:30 a.m. on September 15, and was forwarded to the Commodities Application Group for delivery to the person designated as the addressee on the mailing label. Consequently, the proposal did not arrive in the bid opening room before the 1 p.m. deadline. After the contract was awarded to Sonetronics Inc. on September 9, 1998, the contracting officer notified Comspace that its proposal was received late and was not considered for award, and this protest followed.¹

An offeror has the responsibility to assure timely arrival of its proposal and must bear the responsibility for its late arrival unless a specific exception permitting the consideration of a late proposal is met. Hubbs-Sea World Research Inst., B-210579, Mar. 1, 1983, 83-1 CPD ¶ 193 at 2. As provided in the instant RFP, a late proposal may be considered under appropriate circumstances if it was sent by express mail not later than 2 working days before the closing date for receipt of proposals. A late proposal may also be considered if it is determined that late receipt was due solely to government mishandling after timely receipt at the government installation. 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. Secure Applications, Inc., B-261885, Oct. 26, 1995, 95-2 CPD ¶ 190 at 2-3.

¹The record does not indicate why contract award occurred almost a full year after the proposal submission date.

Here, because Comspace's proposal was mailed only 1 working day before the closing date, on the Friday preceding the Monday on which it was due, it does not fall under the 2 working day express mail exception. Comspace's proposal also does not fall within the government mishandling exception because Comspace's own actions substantially contributed to the late arrival of its proposal at the designated location. Comspace failed to indicate the time specified in the RFP for receipt or to address its proposal package to the bid opening room, as required by the RFP; instead, Comspace misaddressed the proposal to an inappropriate individual. A proposal that is misaddressed, and as a result arrives at the proper location late because it was routed through the routine mail processing system to the wrong location, is not considered to be late as the result of government mishandling. Materials Sciences Corp., B-212590, Dec. 27, 1983, 84-1 CPD ¶ 27 at 3.²

Comspace takes the position that its proposal was not late, since it was "timely received at the government agency." Protester's Comments at 1. Contrary to Comspace's understanding, the arrival of a proposal at the government installation is not equivalent to the arrival in the room designated in the RFP for opening. The RFP requires that proposals be received at the designated room by the established time. Proposals are properly rejected as late where they are delivered to an intermediary stop prior to the designated time, but received late at the specified location. See Motorola, Inc., B-219592, July 24, 1985, 85-2 CPD ¶ 84 at 2; Chemical Waste Management, Inc., B-215382, Sept. 10, 1984, 84-2 CPD ¶ 274 at 2. Since receipt at the mail depot does not constitute receipt at the designated location, the agency properly treated Comspace's proposal as late.

The protest is denied.

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²Comspace also argues that the fact that agency personnel opened the package containing its proposal "indicates acceptance of the bid." Protester's Comments at 1. This argument is without legal merit; even where a proposal has been opened and initially accepted, it may later be rejected if further analysis of the circumstances reveals that the proposal was in fact received late. See MC II Gov't Sys. and Servs., Inc., B-258089, Dec. 15, 1994, 94-2 CPD ¶ 242 at 4.