



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: RGI, Inc.

File: B-280005

Date: August 17, 1998

Edward Tolchin, Esq., Fettmann, Tolchin & Majors, P.C., for the protester.
Maj. Robert L. Duecaster, Department of the Army, for the agency.
Marie Penny Ahearn, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where proposal sent via United States Postal Service Express Mail Second Day Service is received by contracting agency after time for receipt of proposals stated in solicitation, proposal is late and must be rejected; receipt of proposal at local post office before closing time does not constitute timely receipt at activity designated for receipt of offers.

DECISION

RGI, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. DAKF40-97-R-0032, issued by the Department of the Army for the operation of learning, language, and testing centers at Fort Bragg, North Carolina.

We deny the protest.

The RFP, as amended, established as the closing time for receipt of proposals 3 p.m. Eastern Standard Time on April 16, 1998, Amendment No. 0006 at 2, and instructed offerors to "Address Offer To . . . Directorate of Contracting; Bldg 1-1333, Room 107; Corner of Macomb & Armistead Sts; Fort Bragg NC 28307." RFP Cover Sheet, Item 8. In addition, the solicitation included the standard instructions to offerors clause, Federal Acquisition Regulation (FAR) § 52.215-1, providing that an offer "received at the office designated in the solicitation after the exact time specified for receipt" shall not be considered unless it was received before contract award and, as relevant here, either: (1) was sent by "U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals," FAR § 52.215-1(c)(3)(i)(C); or (2) there is "acceptable evidence to establish that it

was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers," and "accepting the late offer would not unduly delay the procurement." FAR § 52.215-1(c)(3)(i)(E).

The record indicates that RGI correctly addressed and labeled its offer package and sent the package by United States Postal Service (USPS) Express Mail Second Day (not Next Day) Delivery at 1:17 p.m. on Tuesday, April 14, 1998. The offer package arrived at the USPS Fort Bragg Post Office at 12:13 p.m. on April 15, and was signed for by a USPS employee.¹ However, when the Army mail clerk for the Directorate of Contracting made a daily mail call at the Fort Bragg Post Office on Thursday, April 16, at 9:30 a.m., prior to the 3 p.m. closing time for receipt of proposals, RGI's offer package was not in the mail handed to the Army clerk. Statement from Army Mail/File Clerk, undated.² As a result, RGI's offer was not among the several proposals received by the closing time of 3 p.m. on April 16. Contracting Officer's Statement, at 1.

Thereafter, when the Army mail clerk made the mail call at the Fort Bragg Post Office at 2 p.m. on Friday, April 17, RGI's offer package was handed to the Army clerk. Statement from Army Mail/File Clerk, Apr. 20, 1998. The Army clerk signed for the package at 2:20 p.m., as indicated on the USPS mailing label, and delivered it to the contracting division, where it was time/date stamped as received at 2:54 p.m. on April 17. Because the offer was received after the closing date, it was not opened and was rejected as late by the contracting officer, who determined that none of the exceptions for consideration of late offers (as provided for in FAR § 52.215-1(c)(3)(i)) applied. Contracting Officer's Determination of Late Proposal, at 2-3.

The USPS has acknowledged that it failed to follow the standard procedure for processing express mail for customer pickup, that is, it failed to place either a notification slip regarding the express mail package, or the package itself, in the Directorate of Contracting's postal drawer upon receipt of RGI's express mail package on April 15. Contracting Officer's Statement, at 1; Contracting Officer's

¹The agency reports that this was indicated on the USPS express mail label under the item "Delivery Attempt." Postal Service procedures support the Army's report that the indicated time of 12:13 p.m. does not refer to an attempted delivery to the Army mail clerk; those procedures provide that the "time the notice was placed in the box . . . not the time the addressee claimed the shipment" is entered on the delivery attempt item on the USPS express mail label. USPS Methods Handbook, DM-201 Express Mail Service § 244.2 (1988).

²By arrangement between the Army and the USPS, mail for the Directorate of Contracting is held at the USPS Fort Bragg post office in a drawer under USPS control for pickup by the Army.

Determination of Late Proposal, at 1; Statement from Army Mail/File Clerk, Apr. 20, 1998. Instead, according to the branch manager of the Fort Bragg Post Office, "a notification slip was not placed in the [postal drawer] until the morning of April 17, 1998." Statement from Branch Manager, Fort Bragg Post Office, May 13, 1998. As a result, when the Army mail clerk requested the mail on the morning of April 16, the postal clerk who retrieved the mail from the postal drawer did not know that there was an express mail package for the Army elsewhere in the post office, and thus did not hand it over to the Army clerk.

RGI argues that its late offer fits within the exceptions for acceptance of late offers, because (1) based on the unavailability of Express Mail Next Day Service to Fort Bragg, the Express Mail Second Day Service it used was the best alternate and should be considered identical to Next Day Service, and (2) its proposal was received at the Fort Bragg Post Office and was under the government's control prior to the time set for receipt of offers.

Neither FAR exception for acceptance of late offers applies here. The first exception, FAR § 52.215-1(c)(3)(i)(C), does not apply because Express Mail Second Day Service clearly is not identical to the Express Mail Next Day Service required under the exception. The regulations do not establish an exception for Second Day Service where Next Day Service may not be available; in such circumstances, firms must employ other acceptable means to ensure timely receipt of their offers. Nor does the exception in FAR § 52.215-1(c)(3)(i)(E) apply; receipt for purposes of the FAR clause means receipt at the procuring agency or ultimate destination, and not receipt at the local post office. Southeastern Enters., Inc., B-237867, Mar. 21, 1990, 90-1 CPD ¶ 314 at 3.

We note that there are situations not covered under the late offer clause where consideration of a late offer nonetheless is warranted. An offer received after opening may be considered where there was government mishandling in the process of receipt (as distinguished from mishandling after receipt), which was the paramount cause of the bid or offer being late. Southeastern Enters., Inc., *supra*. For example, government mishandling of an offer delivered to a post office box may be found where the agency failed to employ procedures designed to permit timely delivery of the offer to the contracting activity within a reasonable time before the time specified for receipt of proposals. *Id.* However, in order to conclude that the offer was mishandled by the contracting agency after receipt at the post office, it first must be established that the agency was given some notice of the offer prior to the time for receipt of offers. Allstate Rent-A-Car, Inc., B-225633, May 1, 1987, 87-1 CPD ¶ 458 at 3-4; see Hub Constr. Co., Inc., B-258474, Jan. 19, 1995, 95-2 CPD ¶ 186 at 3. Here, the record does not establish that either the offer or notice of the offer was in the postal drawer prior to the time for receipt of offers

or that the Army otherwise had notice prior to that time that the offer package was ready for pickup at the post office. Accordingly, RGI's offer was properly rejected as late.

The protest is denied.

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