



## Decision

**Matter of:** C-T Construction JV

**File:** B-405575

**Date:** November 21, 2011

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### DIGEST

Protest is sustained where agency failed to employ adequate procedures to receive proposal delivered to designated mailing address more than 3 hours before submission deadline.

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### DECISION

C-T Construction JV, of Bargersville, Indiana, protests the Department of the Navy, Naval Facilities Engineering Command's decision to reject as late its proposal submitted in response to request for proposals (RFP) No. N69450-11-R-1759 for facilities support services at Marine Corps Logistics Base in Albany, Georgia. C-T argues that its proposal was improperly rejected as late.

We sustain the protest.

### BACKGROUND

The RFP, issued on January 7, 2011, as a total small business set-aside, solicited offers for facility support services at Marine Corps Logistics Base in Albany, Georgia. RFP at 1; Agency Reply to Protester's Response to Motion for Dismissal at 1. The solicitation provided that final revised proposals would be "received at the place specified in Item 8 [of the solicitation cover sheet] . . . until 02:00 PM local time" on August 2.<sup>1</sup> RFP at 1; RFP amend. 0007, at 2-4. Item 8 of the solicitation cover sheet,

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<sup>1</sup> Initial proposals were due on February 17. RFP at 1. The agency established a competitive range, conducted discussions with offerors, and amended the

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“ADDRESS OFFER TO,” stated “See Item 7.” RFP at 1. Item 7, “ISSUED BY,” specified the following address:

NAVFAC SOUTHEAST  
IPT SOUTH CENTRAL  
BLDG 135, PO BOX 30  
NAS JACKSONVILLE  
JACKSONVILLE FL 32212-0030

RFP at 1; see also RFP amend. 0007, at 3 (requiring delivery to address in block 7 of RFP’s cover sheet).

Additionally, proposals were to contain separate price and technical volumes. RFP amend. 0007, at 2. The RFP required that proposals be “labeled” as follows:

PROPOSAL FOR RFP N69450-11-R-1759, MCLB FACILITIES  
INVESTMENT SERVICES CONTRACT, MARINE CORPS LOGISTICS  
BASE, ALBANY, GA, ATTN: [procuring contract specialist], IPT-SC; DO  
NOT OPEN IN MAIL ROOM.

Id.

The record shows that at 4:01 p.m. local time (Eastern Time) on August 1, C-T mailed its final revised proposal<sup>2</sup> to the post office box specified in the RFP using United States Postal Service (USPS) express mail; the mailing required a signature for delivery.<sup>3</sup> Protest at 3; Protest, attach. 4, USPS Tracking Information, at 1. The USPS guaranteed that the package would be delivered by 12:00 p.m. on August 2. Protest at 3.

The Navy reports that on the morning of August 2, the agency’s mail room manager went to the Naval Air Station (NAS) Jacksonville post office and collected the mail

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solicitation to require final revised proposals by August 2. Id.; see RFP amend. 0007, at 1; Agency Motion for Dismissal at 1.

<sup>2</sup> C-T submitted an initial proposal prior to February 17, and the agency included the firm in the competitive range. Agency Motion for Dismissal at 1.

<sup>3</sup> C-T’s proposal package was marked that it was a proposal and referenced the solicitation number. Protest, attach. 1, Proposal Package Labeling, at 1. C-T labeled the package to the attention of the contracting officer, not the procuring contract specialist named in Amendment 0007 of the RFP. Id.; Protest at n.2; see RFP amend. 0007, at 2.

from P.O. Box 30. Agency Motion for Dismissal at 2. C-T's proposal had not yet arrived. Id.

At 10:40 a.m., after the morning mail run, the USPS attempted to deliver C-T's proposal package to P.O. Box 30. Id.; Protest at 3. However, no Navy personnel were available to sign for and receive the package. Agency Motion for Dismissal at 2; Protest at 3. As a result, the USPS left a notice of the attempted delivery for the agency, and the NAS Jacksonville post office retained the package.<sup>4</sup> Protest at 3.

During the next morning's mail run--after proposals were due--the mail room manager signed for and received C-T's proposal package. Agency Motion for Dismissal at 2. C-T's proposal was brought to the procuring contract specialist on the afternoon of August 3, and the Navy subsequently rejected the proposal as late. Id. at 2-3.

In an August 18 letter from the contracting officer to C-T, the Navy informed the company that its proposal was late and would not be considered. Protest, attach. 6, Letter from Navy to C-T, Aug. 18, 2011, at 3. In the letter, the Navy acknowledged that C-T "did use the correct mailing address." Id. at 2. However, the Navy explained that C-T's proposal being deemed late was "the direct result of [C-T's] choice to submit [its] final revised proposal by U.S. mail with a signature required for delivery." Id. at 3. This protest followed.

## DISCUSSION

C-T asserts that the Navy improperly rejected its proposal as late. Protest at 4. C-T contends that the request for signature upon delivery was not the cause of the proposal being late. Id. at 5. Rather, C-T argues that it was "patently unreasonable" for the Navy to make its only mail run of the day more than 3 hours prior to the solicitation's closing time. Id. at 4.

It is the responsibility of each firm to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the submission. Federal Acquisition Regulation § 15.208(b); Sector One Sec. Solution, B-400728, Dec. 10, 2008, 2008 CPD ¶ 224 at 2; Sencland CDC Enters., B-252796, B-252797, July 19, 1993, 93-2 CPD ¶ 36 at 3. However, an offer received after opening may be considered where there was government mishandling in the process of receipt, which was the paramount cause of the offer being late. RGI, Inc., B-280005, Aug. 17, 1998, 98-2 CPD ¶ 45 at 3; Southeastern Enters. Inc., B-237867, Mar. 21, 1990, 90-1 CPD ¶ 314 at 3. For example, government mishandling of an offer delivered to a post office box may be

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<sup>4</sup> The agency reports that the USPS gave notice to the agency of C-T's package by posting a note on a clipboard at the counter of the post office. Agency Reply to Protester's Response to Motion for Dismissal at 2.

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. RGI, Inc., supra, at 3; Nuaire, Inc., B-221551, April 2, 1986, 86-1 CPD ¶ 314 at 4. In order to conclude, however, that an offer delivered to a post office box was late solely because of government mishandling, it must be established that the offer—or at least some notice concerning it—was in the box sometime prior to the time for opening of offers. RGI, Inc., supra, at 3-4; Nuaire, Inc., supra, at 4; see also Allstate Rent-A-Car, Inc., B-225633, May 1, 1987, 87-1 CPD ¶ 458 at 3.

For example, in Microflect, B-225118, Feb. 17, 1987, 87-1 CPD ¶ 173, we determined that an agency failed to use procedures that would have permitted bids to be delivered to the contracting officer within a reasonable time before bid opening. Id. at 3. The post office left notice of the bid package 4 and 1/2 hours before bid opening, but the agency did not check the post office until the following morning. Id. Our Office concluded that the agency had a duty to check the post office for bids received sufficiently in advance of bid opening even if mail pickups were not regularly scheduled during this time period. Id.; see also Allstate Rent-A-Car, Inc., supra (failure of agency to employ reasonable procedures to assure timely receipt of bid held at post office was paramount reason of bid being late); cf. RGI, Inc., supra (agency not paramount cause of late proposal where agency made sole mail run of day 5 and 1/2 hours before bid opening, but USPS failed to place any notification of package in contracting activity's postal drawer).

Similar to Microflect, the Navy here conducted its sole mail run of the day more than 3 hours prior to when proposals were due. Agency Motion for Dismissal at 2. Moreover, the record shows that C-T complied with the solicitation's requirements for the submission of proposals. C-T correctly addressed its proposal package to the post office box identified in Item 7 of the solicitation's cover sheet (P.O. Box 30), as required by the RFP.<sup>5</sup> Protest at 3; see RFP at 1. Additionally, C-T complied with the solicitation's requirement to submit proposals before 2 p.m. on August 2. See RFP at 1; RFP amend. 0007, at 2-4; Protest at 3. In this respect, the record shows that the

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<sup>5</sup> The Navy acknowledged in its debriefing letter that C-T used the correct mailing address. Protest, attach. 6, Letter from Navy to C-T, Aug. 18, 2011, at 2. Now, in response to the protest, the Navy argues that the RFP required offerors to deliver proposals to the procuring contract specialist named in the RFP at "Building 135" by the 2 p.m. deadline. Agency Motion for Dismissal at 3, 4; Agency Reply to Protester's Response to Motion for Dismissal at 1. Although the RFP required that the proposal be "labeled" to the attention of the procuring contract specialist, the RFP did not require actual delivery to that individual. See RFP amend. 0007, at 2. On the contrary, the Navy chose a box at the post office as the destination where the agency would receive mailed proposals by the 2 p.m. deadline. RFP at 1; RFP amend. 0007, at 3.

postal service attempted to deliver C-T's proposal to P.O. Box 30 at 10:40 a.m. on August 2, more than 3 hours before the solicitation's closing time.<sup>6</sup> Agency Motion for Dismissal, encl. 4, USPS Tracking Information, at 1. Because agency personnel were not available to sign for C-T's proposal package, the postal service left notice of the package for the Navy and retained the package at the post office where the P.O. Box was located. Agency Motion for Dismissal at 2; Protest at 3.

The record reflects that the delay in the agency receiving C-T's proposal was due to a failure on the part of the Navy. Although the solicitation indicated that the Navy would receive proposals until 2 p.m., no Navy personnel were available to sign for C-T's proposal until the morning after proposals were due. RFP at 1; Agency Motion for Dismissal at 2. In this regard, the Navy failed to employ procedures to ensure proposals would be received by 2 p.m., as the solicitation required. See RFP at 1.

The Navy asserts that C-T's decision to require a signature upon delivery was the reason the proposal was late.<sup>7</sup> Agency Motion for Dismissal at 2. On this record,

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<sup>6</sup> The Navy asserts that the "Postal Service held the package without . . . attempting delivery[] or placing notice in the Agency's post office box." Agency Reply to Protester's Response to Motion for Dismissal at 6. The record shows, however, that the postal service attempted delivery at 10:40 a.m. on August 2, and left notice for the agency at 10:41 a.m. See Agency Motion for Dismissal, encl. 4, USPS Tracking Information, at 1.

<sup>7</sup> In its motion for dismissal and subsequent filing, the Navy argues that C-T's protest should be rejected based on our decisions in similar protests. We are not persuaded by the Navy's arguments and distinguish this protest from those presented by the Navy. For example, in Northwest Heritage Consultants, B-299547, May 10, 2007, 2007 CPD ¶ 93, we denied a protest where the USPS attempted, but could not complete, delivery of the protester's submission before the deadline. Id. at 3. However, in that protest, as distinguished from this one, we concluded that the evidence did not establish that there was ever an attempt to deliver the submission before the deadline. Id. at 3-4. Likewise, there was no evidence that the agency failed to make proper arrangements for deliveries. Id.

Similarly, because C-T marked its proposal package to the attention of the contracting officer and not the procuring contract specialist (as stated in the RFP), the Navy argues that its proposal was misaddressed and was properly rejected consistent with our decision in Sector One Sec. Solution, supra. However, in that protest, the protester mailed its proposal to an incorrect mailing address. Id. at 2; see also Comspace Corp., B-281067, Nov. 30, 1998, 98-2 CPD ¶ 122 at 3 (agency properly rejected late proposal where offeror misaddressed package). Here, C-T used the correct mailing address. The fact that C-T labeled its proposal to the attention of the contracting officer is of no consequence because delivery was attempted to the correct address prior to the solicitation's closing time.

however, we find that the signature requirement did not contribute to the proposal being deemed late. As discussed, the USPS attempted delivery more than 3 hours before the submission deadline and the package was held at the post office where the P.O. Box was located, waiting for Navy personnel to pick it up. But for the Navy's decision to conduct its sole mail run of the day well before proposals were due, the Navy would have signed for and received C-T's submission prior to the deadline. Consequently, we disagree with the Navy's assertion that the signature requirement contributed to the proposal being late.

In sum, we find that the primary or paramount cause of the lateness of C-T's proposal was not the result of a failure on C-T's part, but rather was due to the government's actions. We therefore find that it was unreasonable for the Navy to have rejected C-T's proposal as late, and we sustain the protest on this ground.

We recommend, consistent with this decision, that the agency consider C-T's proposal for award. We further recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2011). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be filed to the agency within 60 days after receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson  
General Counsel