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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** O.S. Systems, Inc.

**File:** B-292827

**Date:** November 17, 2003

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Paul H. Gunderson, for the protester.

Capt. Richard M. Sudder, Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency properly rejected protester's hand-carried proposal as late where the delivery driver significantly contributed to the late receipt of the proposal by failing to allow sufficient time for timely delivery.

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### DECISION

O.S. Systems, Inc. protests the rejection of its proposal as late under request for proposals No. USZA22-03-R-0035, issued by the United States Special Operations Command (USSOCOM), to acquire 100 Maritime Assault Suit Systems.

We deny the protest.

Under the RFP, as amended, the time set for receipt of proposals was 2 p.m., Eastern Daylight Time, August 21, 2003. As originally issued, the RFP stated, "Submit signed and dated offers to [Headquarters] USSOCOM; ATTN: SOAL-KB ([name of contracting officer]), Building 102, 2<sup>nd</sup> Floor, 2418 Florida Keys Ave; MacDill AFB [Air Force Base], FL 33621." RFP at 13. Amendment No. 0002, dated August 5, changed the delivery location to "HQ USSOCOM; ATTN: SOAL-KB ([name of contracting officer]) 7701 Tampa Point Blvd., MacDill AFB, FL 33621-5323." No other directions pertaining to proposal delivery were included in the RFP. The RFP stated that "offers are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government Office designated in the solicitation by the time specified in the solicitation." RFP at 15.

On August 20, O.S. sent its proposal by commercial carrier for overnight delivery. A local delivery company was to hand-carry the proposal to the designated address. According to the local delivery driver, he entered MacDill AFB at approximately 1:10 p.m. on August 21. The delivery driver stated that he makes regular deliveries to MacDill AFB, but mostly to the hospital; that he generally uses a map provided to him by the visitors' center; and that the building "HQ USSOCOM" is not listed on that map. Because of this, the delivery driver stated that he first went to the hospital mailroom to drop off another delivery and then reviewed a detailed map of MacDill AFB located there in order to find the designated address to deliver the proposal. From there, he proceeded to Tampa Point Boulevard, turned into the designated roadway, and discovered that the address was located in a restricted area on the base, secured by a gate and security ramp, and with keypad access only.<sup>1</sup> The time was approximately 1:47 p.m. He indicates that he exited his vehicle and tried to locate a guard or way to access the building but saw no guard or entrance way. Returning to the vehicle, the delivery driver indicates he proceeded further down the road, notified the dispatcher, and attempted to contact the contracting officer by phone at approximately 1:50 p.m. but received no answer.<sup>2</sup> The driver then indicates that, after receiving instructions from a person that happened to be exiting a part of the 7701 Tampa Point Boulevard complex, he located the mailroom for 7701, which was in a trailer behind one of the buildings. He states that "[he] arrived at this mailroom right around 2:00 p.m. or just shortly thereafter," and then waited in line until a person there directed him to the contracting officer's office, which was at the same address initially designated for the submission of proposals located in an unsecured area at MacDill AFB. The driver indicates that he finally hand-delivered the package to the contracting officer at this address, and she marked it as received at 2:30 p.m. See Statement of Delivery Driver (Aug. 28, 2003); Affidavit of Delivery Driver (Oct. 15, 2003). USSOCOM rejected the proposal as late on August 26. This protest followed.

O.S. essentially contends that the sole causes of the late delivery of the proposal were the lack of clear instructions in the RFP concerning the hand-delivery of proposals, the restricted access at the designated address, and the difficulty of locating the mailroom. O.S. argues that the government had the responsibility of providing a delivery address reasonably accessible and easy to locate to accommodate hand-carried proposals from commercial carriers. For a variety of reasons, including that no building in the complex was identified, and that the contracting officer did not maintain an office at the delivery address, O.S. argues that USSOCOM frustrated the delivery of the proposal.

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<sup>1</sup> The delivery driver states that 7701 Tampa Point Boulevard encompasses several multi-story buildings that are highly secured with every door having keypad access only. Affidavit of Delivery Driver (Oct. 15, 2003), at 2.

<sup>2</sup> The agency phone records reflect that this call occurred at approximately 1:58 p.m.

It is an offeror's responsibility to deliver its proposal to the proper place by the proper time, and late delivery generally requires rejection of the proposal. Federal Acquisition Regulation § 15.208; The Staubach Co., B-276486, May 19, 1997, 97-1 CPD ¶ 190 at 3. However, a hand-carried proposal that arrives late may be considered if improper government action was the paramount cause for the late submission, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Cadell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. Id. Nevertheless, even in cases where the late receipt may have been caused, in part, by erroneous government action, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility to deliver a hand-carried proposal to the proper place by the proper time. Integrated Support Sys., Inc., B-283137.2, Sept. 10, 1999, 99-2 CPD ¶ 51 at 2. Here, as explained below, we find no basis to conclude that improper government action was the paramount cause for the late submission of O.S.'s proposal.

Even conceding that USSOCOM may have complicated delivery of hand-carried proposals by not including more explicit instructions in the RFP and by designating a location with restricted access for receipt of proposals, the record evidences that the delivery driver contributed significantly to the late delivery of the proposal. Indeed, the record indicates that the main reason that the proposal was received late was because the delivery driver was unfamiliar with the exact address on MacDill AFB, and decided to make another delivery first and then to attempt to find the filing location unaided, rather than seeking advice concerning the address and location of the contracting officer immediately upon entering the facility. It was only after this effort proved unsuccessful that the delivery driver attempt to contact the contracting officer (just prior to 2 p.m.), and to seek the assistance of other personnel, including those in the mailroom at the designated address.<sup>3</sup> The delivery driver ultimately was able to deliver the proposal to the contracting officer, albeit 30 minutes after the designated time for receipt of proposals, which evidences that the delivery driver could have delivered the proposal to the proper place at the proper time if he had more prudently utilized his time upon entering the facility. Thus, we find that the

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<sup>3</sup> Even though it appears that the mailroom for the 7701 complex may have been a suitable place for the delivery driver to deposit the proposal, the delivery driver states that he arrived at this facility at or after 2 p.m., and was not assisted by these personnel until after this time. Therefore, from this record the proposal would not have been stamped as received by this facility in time enough to meet the RFP's deadline, even if the protester had handed it to the government personnel at that point. In any event, there is no evidence that the delivery driver made any attempt to deliver the proposal to the government personnel there or that the personnel took possession of the protester's proposal.

delivery driver significantly contributed to the late receipt of O.S.'s proposal, and that improper government action was not the paramount cause of its late receipt. In these circumstances, we find no basis to question the agency's decision to reject O.S.'s proposal as late.<sup>4</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>4</sup> O.S. also asserts that the specifications for this RFP were overly restrictive. This protest of an apparent solicitation impropriety, filed after the closing date for receipt of proposals, is untimely filed under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2003).