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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: InfoGroup Inc.

File: B-294610

Date: September 30, 2004

A. Dewey Jordan for the protester.

R.T. Baumann III, Esq., Stanley Feldman, Esq., and John Donaldson, Esq., National Highway Traffic Safety Administration, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's proposal as late where record shows that protester's failure to include room number on package--not improper government action--was cause of commercial carrier's inability to make timely delivery.

DECISION

InfoGroup, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. DTNH22-04-05091, issued by the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT), for traffic injury control evaluation and behavioral technology support.

We deny the protest.

The solicitation informed offerors that proposals were to be received at DOT at the designated place--400 Seventh Street, SW, Room 5301, Washington D.C. 20590--by the designated time, Monday, August 16, 2004, at 2 p.m. The solicitation did not include any other directions pertaining to the manner of proposal delivery, and incorporated Federal Acquisition Regulation § 52.215-1, which states that late proposals generally will not be considered for award.

InfoGroup sent its proposal by a commercial carrier, FedEx, for overnight delivery on Thursday, August 12. InfoGroup included the street address on the package mailing label and also provided additional information, such as the contracting officer's name and telephone number, but did not include the room number.

The FedEx courier arrived at the DOT building with InfoGroup's package (and, apparently, numerous other packages) at around 9:30 a.m. on Friday, August 13. Security personnel x-rayed and date-stamped the package, and the courier then signed in at 9:37 and proceeded into the building to deliver the packages, unescorted, to individual rooms. While at the building, according to the courier, he attempted to telephone the contracting officer at the number on InfoGroup's proposal package to find out the room number to which the package should be delivered, but there was no answer. Letter from FedEx to Protester, Sept. 9, 2004. Before leaving the building at 2:30 p.m., the courier placed a second call to the contracting officer; again, however, there was no answer. The courier therefore left the building and returned to the FedEx office with the package. FedEx telephoned the agency again on the afternoon of Tuesday, August 17, and learned the room number at that time. The proposal package finally was delivered on August 18 at 12:11 p.m. Since this was well after the August 16 closing time, the agency rejected the proposal as late.

InfoGroup asserts that its proposal should be deemed timely received because it arrived at the proper building with ample time to be delivered to the designated room, and was not timely delivered only because DOT failed to escort the courier to the proper room (as InfoGroup believed was DOT building policy), and because there was no one available to answer the courier's telephone calls seeking the room number.

An offer is late if it does not arrive at the office designated in the solicitation by the time specified in the solicitation. Sencland CDC Enters., B-252796, B-252797, July 19, 1993, 93-2 CPD ¶ 36 at 3. Where late receipt results from the failure of an offeror, or the commercial carrier hired by the offeror, to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late offer may not be considered. Aztec Dev. Co., B-256905, July 28, 1994, 94-2 CPD ¶ 48 at 3. An offer that arrives late may only be considered if it is shown that the paramount reason for late receipt was improper government action, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that made it impossible for the offeror to deliver the proposal on time. Id.

The protest is without merit. There is no evidence of improper agency action. The RFP clearly set forth the precise location for delivery of proposals, and InfoGroup's courier arrived at the proper address and was permitted access to the building for purposes of delivering packages. While the protester points to the agency's failure to escort the courier or to be available to provide information to the courier, the agency was not required to perform these functions. Rather, the agency fulfilled its responsibility by providing the protester with complete delivery information, including the room number, and then providing the protester's courier with access to the building for purposes of delivering the proposal. The fact that the agency did not proceed in accordance with InfoGroup's understanding regarding DOT building policy is not improper agency action; the RFP did not state that couriers would be

escorted to the designated room, and there simply was no basis for the protester to plan the delivery of its proposal using that assumption.

InfoGroup, on the other hand, did not reasonably fulfill its responsibility for ensuring timely delivery. The solicitation informed offerors that proposals were to be received in room 5301. InfoGroup failed to list the room number on the proposal package and this, as the record shows, led to the courier's inability to deliver the package. In this regard, as noted above, FedEx states in a September 9 letter sent to the protester in connection with this protest that the courier was unable to deliver the proposal package on August 13 due to the absence of a room number on the package. We note that this explanation is consistent with the courier's attempts to contact the contracting officer while he was in the DOT building on August 13.

The protester suggests that an incorrect zip code appearing on the FedEx printed label may have been responsible for the late delivery. This argument is without merit. No matter how the incorrect zip code came to be written on the package--this is not clear from the record, although there is no evidence, or reason to believe, that the agency wrote the incorrect zip code--the package arrived at the correct building. The zip code had nothing to do with the courier's inability to deliver the package once inside the building.

The protest is denied.

Anthony H. Gamboa
General Counsel