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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Hunter Contracting Company

File: B-402575

Date: March 31, 2010

B. Michael Schestopol, Esq., and Anne Marie Tavella, Esq., Oles Morrison Rinker & Baker LLP, for the protester.

Susan C. Stevenson-Popp, Esq., Department of Homeland Security, Bureau of Customs and Border Protection, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's late delivery of its proposal is not excused where the government was closed due to inclement weather for several days prior to the closing date for receipt of proposals, but normal government processes had resumed by the scheduled closing date such that the agency was able to receive proposals by the exact time specified in the solicitation; the fact that a delayed arrival/unscheduled leave policy for government employees was authorized for that day did not mean that normal government processes had not resumed.

DECISION

Hunter Contracting Company, of Tucson, Arizona, protests the rejection of its proposal as late under request for proposals (RFP) No. HSBP1209R2483, issued by the Department of Homeland Security, Bureau of Customs and Border Protection (CBP), for comprehensive tactical infrastructure maintenance and repair along the United States southwest border.

We deny the protest.

The RFP, as amended, required offerors to submit proposals to the CBP's Arlington, Virginia office by 3 p.m. (eastern time), Friday, February 12, 2010. Hunter mailed its proposal from Tucson, Arizona on February 10 via the United States Postal Service's "Next Day Noon Express." Due to severe inclement weather in the Washington D.C. area, airplane flights were cancelled and federal agencies were closed February 8-11. On Friday, February 12, federal agencies reopened, but were operating on a "delayed

arrival/unscheduled leave” policy. Hunter’s proposal was delivered to the CBP on the morning of Tuesday, February 16—the next business day following February 12.¹ The agency rejected Hunter’s proposal as late, and this protest followed.

The protester argues that, given the inclement weather and resulting closures, the CBP should have accepted its proposal under Federal Acquisition Regulation (FAR) § 15.208(d). This section provides that

[i]f an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

Hunter argues that, consistent with this FAR provision, its proposal was timely submitted because CBP received the proposal prior to 3 p.m. on the first work day that normal government processes resumed.

We agree with the agency that FAR § 15.208(d) does not apply to the circumstances here. The CBP concluded that normal government operations resumed on February 12 because the government was open that entire day. Since the government was open on February 12, the earlier closures that Hunter cites did not prevent the CBP from receiving proposals “by the exact time specified in the solicitation.” FAR § 15.208(d). Indeed, the record shows that the CBP had an individual in place to receive proposals beginning at 8 a.m. on February 12, and CBP received a number of proposals prior to the 3 p.m. closing time. Motion to Dismiss at 2. While Hunter points to the “delayed arrival/unscheduled leave” policy to show that government processes were interrupted on February 12, the relaxed arrival and leave policy did not mean the government had not resumed normal operations, and, in fact, had no bearing on the agency’s ability to receive proposals by the specified closing time. Because Hunter did not timely deliver its proposal to the CBP, the proposal was late and properly rejected. See FAR § 52.215-1(c)(3); PMTech, Inc., B-291082, Oct. 11, 2002, 2002 CPD ¶ 172 at 3 (“It is an offeror’s responsibility to deliver its proposal to the proper place at the proper time.”)

The protest is denied.

Lynn H. Gibson
Acting General Counsel

¹ Monday, February 15, was a federal holiday.