



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Occu-Health, Inc.

**File:** B-250043

**Date:** October 30, 1992

Patricia O. McCullough for the protester,  
Don G. Bush, National Aeronautics and Space Administration,  
for the agency,  
Peter A. Iannicelli, Esq. and Jerold D. Cohen, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Whether a hand-carried proposal is late is measured by the time of arrival at the office designated in the solicitation, not at the agency's lobby.
2. Protest against rejection of a hand-carried best and final offer (BAFO) submitted after the time set for receipt of BAFOs is denied where the late delivery was not caused by improper government action.

### DECISION

Occu-Health, Inc., protests the National Aeronautics and Space Administration's (NASA) rejection of its best and final offer (BAFO) on the basis that the hand-carried proposal was submitted late. Occu-Health argues that (1) the BAFO was timely because it was delivered to the lobby of NASA Headquarters 5 minutes before the time set for receipt, and (2) if the BAFO nevertheless is found to have been delivered late, such delivery was the government's fault.

We deny the protest.

Issued on March 13, 1992, the request for proposals (RFP) solicited offers to operate and manage a health and physical fitness facility at NASA Headquarters. Occu-Health's initial proposal was one of six timely proposals received. By letter of August 6, NASA notified Occu-Health that its initial proposal was included in the competitive range and that written discussions would be conducted. The letter contained a list of technical and business questions requiring Occu-Health's response which would be accepted,

along with any other revisions to the initial cost or technical proposal, as Occu-Health's BAFO. The time and date for receipt of BAFOs was set at 3:00 p.m., August 17.

These are the facts according to Occu-Health. One of its employees left the firm's office in Columbia, Maryland, at about 12:20 p.m. on August 17, to deliver the BAFO to the acquisitions division's office in the NASA Headquarters building in Washington, D.C. The employee was traveling by car and encountered a major traffic jam en route. He stopped and telephoned the main number at NASA Headquarters and, when he was unable to speak to the contracting officer, received alternate directions from an unnamed person in the acquisitions division. Occu-Health's employee could not find his way to NASA Headquarters following these directions, so he parked his car on Capitol Hill and took a taxi cab the rest of the way, arriving at the lobby of NASA Headquarters at 2:55 p.m.

Once at the NASA Headquarters building, Occu-Health's employee had to wait at the security guard's desk, because several people were in front of him also trying to gain access and because the guard was on the phone trying to locate a NASA employee for one of those people. When his turn came, the security guard would not admit Occu-Health's courier to the building; the guard looked up the contracting officer's phone number, called her, and asked her to come to the lobby to greet Occu-Health's messenger. When the contracting officer did not show up after approximately 20 minutes, the security guard called a second guard desk at NASA Headquarters' other lobby and located the contracting officer. At approximately 3:15 p.m., the contracting officer came to the correct lobby and took the BAFO from Occu-Health's messenger. Neither the contracting officer nor the security guard gave Occu-Health's courier a receipt for the BAFO.

Later that same day, Occu-Health received a telephone call from the contracting officer stating that its BAFO was late. Again, on August 24, the contracting officer telephoned Occu-Health and informed its president that the BAFO was received after the common cut-off time and, therefore, would not be considered. Occu-Health protested to our Office the next day.

Essentially, Occu-Health contends that its BAFO was submitted before the 3:00 p.m. closing time, because the BAFO was in NASA Headquarters' lobby at 2:55 p.m. Alternatively, Occu-Health argues that if its proposal was, in fact, delivered late, the government is primarily at fault because: (1) a government employee gave Occu-Health erroneous directions to NASA Headquarters; (2) the security guard did not immediately admit Occu-Health's courier to the

building; and (3) the contracting officer took a long time to come to the lobby and secure the BAFO.

Whether a hand-carried proposal is late is measured by its time of arrival at the office designated in the RFP, not by its time of arrival at an agency's lobby or other central receiving area. See General Atomic Co., B-202165, May 27, 1981, 81-1 CPD ¶ 415. The offeror has the responsibility for delivering a hand-carried proposal to the correct location and personnel within an agency. See Resource Analysis, Inc., B-202920, May 26, 1982, 81-1 CPD ¶ 410.

NASA's RFP specifically stated that proposals were to be submitted to NASA Headquarters Acquisition Division, Room 722, NASA Headquarters building. Furthermore, the letter requesting submission of BAFOs specified that BAFO packages must be received by the NASA Headquarters Acquisition Division and marked for the attention of the contracting officer. In view of these express directions regarding where to submit BAFOs, it is irrelevant that Occu-Health's employee may have been in the lobby of the NASA Headquarters building before the 3:00 p.m. closing time. See Resource Analysis, Inc., B-202920, supra. What is relevant is that, by Occu-Health's own admission, the contracting officer did not receive the BAFO until 3:15 p.m.--15 minutes after the time set for submission.

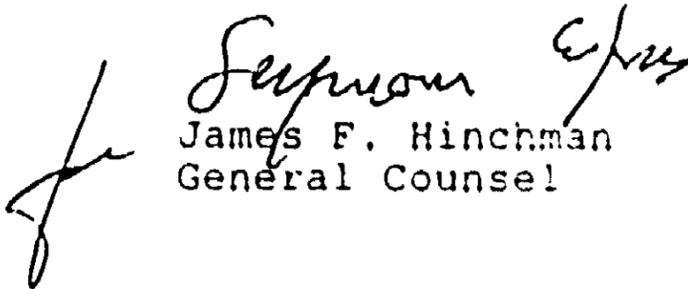
A late, hand-carried proposal may be considered where improper government action was the paramount cause for the late submission, and consideration of the proposal would not compromise the integrity of the competitive procurement process. See Vikonics, Inc., B-222423, Apr. 29, 1986, 86-1 CPD ¶ 419. Improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. In determining whether that standard is met, we consider whether the offeror significantly contributed to the late delivery by not acting reasonably in fulfilling its own responsibility to submit its proposal in a timely manner. Id.

We cannot conclude that improper government action was the paramount cause of the late delivery here. Occu-Health's courier did not arrive at the NASA Headquarters building lobby until 2:55 p.m. While Occu-Health's employee stated that he telephoned and was given mistaken directions by an unnamed NASA employee, we have no way of knowing whether the NASA employee gave incorrect directions or whether the Occu-Health employee misinterpreted or improperly followed correct directions. Furthermore, it appears that traffic, not any improper action by NASA, was the primary cause for Occu-Health's employee taking so long to get to NASA Headquarters. We will not impute improper government action

to the unnamed government employee in these circumstances.  
See St. Charles Travel, B-226567, June 5, 1987, 87-1 CPD  
¶ 575.

Concerning the additional delay caused by the admission procedures followed by the security guard at NASA Headquarters, we have recognized that delays in gaining access to government buildings are not unusual and should not be unexpected. Vikonics, Inc., B-222423, supra. Here, the security guard had to process several other people, including making telephone calls to NASA personnel to get them to come to the guard's desk and meet their visitors, before beginning to process Occu-Health's employee. Occu-Health should have anticipated that there might be some delay in gaining admittance to the NASA Headquarters building. In our view, the primary cause of the late receipt of the BAFO by the contracting officer was the fact that Occu-Health's courier arrived at the guard's desk with just 5 minutes to spare before the time set for submission of BAFOs. See Seer Publishing, Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181.

The protest is denied.

  
James F. Hinchman  
General Counsel