

When last we [wrote](#) about the problem-plagued USAF next-generation aerial refueling tanker acquisition, we told you that Ukrainian aircraft manufacturer Antonov would be submitting a bid in partnership with U.S. Aerospace. Most observers thought little of the “dark-horse” team’s prospects. Nonetheless, the Antonov/U.S. Aerospace team submitted a bid ... and it arrived five minutes too late. As [this article](#) reported—

According to an industry executive, a messenger carrying a bid from U.S. Aerospace arrived at the Wright-Patterson gate at about 1:30 p.m., 30 minutes before the deadline. ‘Air Force personnel intentionally denied the messenger entry to the base’ and later provided ‘incorrect directions,’ and forced the messenger to wait when he got turned around. The proposal was marked 2:05 p.m., but this executive says that the bid was under Air Force control prior to that time

TANKER UPDATE: Russians Submit Late Bid and a Protest

Written by Administrator
Friday, 06 August 2010 00:00

Both EADS and Boeing submitted their competing bids on time. Interestingly, the article noted that each of the other bidders' proposals were "more than 8,000 pages in length."

Because the Antonov bid was late, it was rejected by the US Air Force. The article quotes the Pentagon's press secretary as saying, "The proposal was late and by law we are not allowed to consider it. We are considering two proposals and U.S. Aerospace is not one of those being considered." Moreover, the spokesperson said—

Those deadlines count. They mean something. They are there for a reason and any professional contractor knows that. This is a \$30-40 billion bid. This is not a high school homework assignment. Deadlines count here.

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The Antonov/U.S. Aerospace team promptly filed a protest on August 2, 2010, with the Government Accountability Office (GAO). They claimed the Air Force's actions were unreasonable and that personnel at Wright Patterson AFB discriminated against their bid. Do they have a case? Let's look.

FAR 15.208 has this to say about the treatment of late proposals –

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. ...

(b)(1) Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is 'late' and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

So, to prevail in its protest the Antonov/U.S. Aerospace team must prove that its proposal was received "at the Government installation designated for receipt of proposals and was under the Government's control" before the due date of 2:00 PM. Otherwise, its protest likely will not be sustained.

But regardless of the protest outcome, it strikes us as disadvantageous to the Government to ignore a proposal received a mere 5 minutes after the deadline. Certainly, nobody has hinted that there was some competitive advantage that accrued to the late bid in that five minute period. Given the troubled history of this procurement, we would expect some flexibility to be shown where the other bidders would not be prejudiced and the taxpayers might get their tankers for less money.

On the other hand, such tardiness does reek of amateur hour, doesn't it? How does the Antonov/U.S. Aerospace team expect to build 100 aerial tankers on time and on budget, when it can't even get its proposal to the USAF evaluators on time?

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