



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Palomar Grading & Paving, Inc.

File: B-274885

Date: January 10, 1997

William L. Bruckner, Esq., Bruckner & Walker, for the protester.
Clinton D. Hubbard, Esq., for Weststar, Inc., an intervenor.
Christopher M. Bellomy, Department of the Navy, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly considered awardee's late hand-carried bid for award is denied where awardee's reasonable reliance on the incorrect address specified in the solicitation for the delivery of bids was the paramount cause of late receipt, and the awardee submitted its bid to United Parcel Service (UPS) before bid opening and it does not appear that the awardee handled or otherwise had control over its bid after it was surrendered to UPS and before it was delivered to the agency on the day after bid opening.

DECISION

Palomar Grading & Paving, Inc. protests the award of a contract to Weststar, Inc. under invitation for bids (IFB) No. N68711-96-B-5048, issued by the Department of the Navy for repair of the runway and taxiway at the Marine Corps Air Station (MCAS), Yuma, Arizona. Palomar argues that the Navy was required to reject Weststar's bid as late.

We deny the protest.

The IFB's cover page (Standard Form 1442) stated that bids were due at the place specified in Item 8 by 2 p.m. on August 16, 1996. Item 8 indicated that bids were to be addressed to the issuing authority identified in Item 7 as follows:

"Officer in Charge of Construction
Building 731, MCAS
Box 99129
Yuma AZ 85265-9129"

The zip code set forth in Item 7, however, is incorrect; that zip code identifies Tempe, Arizona, as the destination, while the correct zip codes for MCAS Yuma are 85369 or 85365. The IFB's cover page advised offerors seeking additional information to contact Ms. R. Ruth at (520) 341-2663.

At the bid opening on August 16, bids were received from Palomar and three other bidders. In addition, shortly before bid opening, the agency received a telephone modification sent by Weststar through Western Union, and subsequently confirmed by facsimile transmission and mailgram, asking the agency to "deduct \$250,000 from base bid item 0001A and from total bid price." Weststar's original bid was not received by the agency until its delivery by United Parcel Service (UPS) at approximately 11:08 a.m. (according to UPS records) or 11:14 a.m. (according to the agency) on the following day. As modified, Weststar's bid was low.

UPS shipping documents and tracking information indicate that Weststar furnished its bid to UPS on August 15 for promised delivery to MCAS Yuma by 10:30 a.m. on August 16. Weststar's bid was addressed to:

"R. Ruth, Telephone (520) 341-2663
MCAS OICC
Building 731
Yuma, AZ 85265-9129"

As indicated above, the zip code used by Weststar, although the one specified on the cover sheet of the solicitation (and in Amendment No. 0001 to the solicitation) for receipt of bids, in fact identified the destination as Tempe and not MCAS Yuma. UPS tracking information and a report from UPS indicate that as a result of the incorrect zip code, Weststar's bid package was first sent to Tempe on August 16, was logged in there at 7:08 a.m. on August 16, and then was sent to Yuma via Phoenix on August 17, with delivery to MCAS made shortly after 11:00 a.m. on August 17.

The Navy determined that Weststar's bid had been delivered to UPS in sufficient time to permit delivery to MCAS Yuma before the scheduled bid opening as specified in the solicitation and that the sole or paramount cause of the late delivery was the erroneous zip code furnished by the agency in the solicitation. In the absence of any evidence that Weststar had handled or otherwise had control over its bid after it was surrendered to UPS and before it was delivered to MCAS Yuma on the day after bid opening, the agency concluded that the bid could be considered for award.

Upon learning of the resulting award to Weststar, Palomar filed this protest with our Office against acceptance of Weststar's bid, arguing that the bid instead should be rejected as late. Palomar questions Weststar's reliance on the incorrect zip code

specified on the cover sheet of the solicitation, noting that elsewhere in the solicitation the correct, different zip code (85369-9129) was used when advising offerors how to contact the Officer in Charge of Construction--at Box 99129, Yuma, AZ--for purposes of making technical inquiries, obtaining specifications and serving a copy of any bid protest. In addition, Palomar points out that the address used by Weststar differed from that specified on the cover sheet in several respects: the post office box number was left off; the bid was addressed to "R. Ruth OICC" when Ms. Ruth, although listed in the solicitation as a point of contact, in fact was the bid opening officer and not the Officer in Charge of Construction; Weststar used a standard acronym (OICC) for Officer in Charge of Construction rather than spelling out the term.¹

Bidders generally are responsible for delivering their bids to the proper place at the proper time. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. At the same time, however, the government has the duty to establish procedures for the timely receipt of bids. Select, Inc., B-245820.2, Jan. 3, 1992, 92-1 CPD ¶ 22. Accordingly, one of the fundamental principles underlying the rules for the consideration of late bids is that a bidder who has done all it could and should to fulfill its responsibility should not suffer if the bid did not arrive as required because the government failed in its own responsibility, and if that is otherwise consistent with the integrity of the competitive system. We therefore have held that a late hand-carried bid may be considered for award if to do so would not compromise the competitive system and either the government's "affirmative misdirection" made timely delivery impossible, Select, Inc., *supra*, or government mishandling after timely receipt by the agency was the sole or paramount cause for the bid's late receipt at the designated location. AABLE Tank Servs., Inc., B-273010, Nov. 12, 1996, 96-2 CPD ¶ 180; Kelton Contracting, Inc., B-262255, Dec. 12, 1995, 95-2 CPD ¶ 254.

In our view, the government was the paramount cause of the late receipt of Weststar's hand-carried bid. We have permitted late hand-carried bids to be considered where the bidder's reasonable reliance on improper delivery instructions in the solicitation made it impossible for the bid to be timely delivered to the bid

¹Palomar also claims that Weststar used the wrong telephone number, (620) 341-2663 rather than the (520) 341-2663 specified for Ms. Ruth in the solicitation. Weststar, however, maintains that Palomar has simply misread the hand-written number and our review confirms that the first number in the area code more closely resembles the 5s on the mailing label than the 6s. Although Palomar further claims that Weststar used the number "1" rather than the letter "I" in the abbreviation (OICC) for Officer in Charge of Construction, our review indicates that it was not apparent from the face of the mailing label that a "1" rather than an "I" was intended. Thus, any mistake in this regard was unlikely to delay delivery.

opening location. See, e.g., Select, Inc., supra. Here, although Weststar sent its bid by means reasonably likely to result in delivery at the bid opening location prior to the scheduled opening time had the correct zip code been used, the zip code specified in the solicitation for delivery of bids and used by Weststar was incorrect; as a result, Weststar's bid was first sent to the wrong city and only arrived at MCAS Yuma on the day after bid opening. Although Palomar argues that the use of a different zip code for MCAS Yuma elsewhere in the solicitation should have alerted Weststar to the possibility that it was relying on an incorrect zip code, the president of Weststar has stated that he was unaware of the discrepancy and, in our view, the discrepancy in the zip codes was not sufficiently apparent that Weststar should have been on notice of a possible mistake in the address specified in the solicitation for delivery of bids. As for the differences between the address used by Weststar and that specified on the cover sheet of the solicitation, there is no indication in the record that these discrepancies materially contributed to the untimely delivery of Weststar's bid. Further, Weststar submitted its bid to UPS before bid opening and the president of Weststar has stated that Weststar never saw or otherwise handled its bid after it was surrendered to UPS and before it was delivered to MCAS Yuma. Since Weststar's reasonable reliance on the incorrect address specified by the agency for the delivery of bids was the paramount cause of the late receipt of its bid, and since Weststar relinquished control over its bid before bid opening and thus consideration of the bid for award would not be inconsistent with the integrity of the competitive system, we conclude that the agency properly determined not to reject the bid as late.

The protest is denied.

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