



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Vijaydimon (U.S.A.) Inc.

File: B-286013

Date: September 29, 2000

Leonard Reiss, Esq., Toback, Hyman & Bernstein, for the protester.
Sharron J. Philo, Esq., and Essie Schloss, Esq., Defense Logistics Agency, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's acceptance of late bid modification is denied where the modification was sent by certified mail earlier than 5 days prior to the bid opening date, satisfying the requirements of the solicitation's late bid exception provision.

DECISION

Vijaydimon (U.S.A.) Inc. protests the award of a contract for the sale of a number of lots of industrial diamond stones to Oriental Supreme Ltd. by the Defense Logistics Agency under invitation for bids (IFB) No. DLA-Diamonds-009. The protester asserts that DLA improperly accepted Oriental's late bid modification.

We deny the protest.

The IFB, which is for the sale of surplus diamonds to the highest bidders on a lot by lot basis, states that bid opening would be held on July 6, 2000, at 1 p.m. at the Defense National Stockpile Center, Fort Belvoir, Virginia. The solicitation included a provision entitled "Late Submissions, Modifications, and Withdrawals of Bids," governing the treatment of late bids. In particular, the provision states that "[a]ny bid [or bid modification] received . . . after the exact time specified for receipt will not be considered unless it is received before award and it . . . [w]as sent by registered or certified mail not later than the fifth calendar day before the day specified for receipt of bids," providing further that "[t]he only acceptable evidence to establish the date of mailing of a late bid or modification sent either by U.S. Postal Service registered or certified mail is the U.S. . . . postmark both on the envelope or

wrapper and on the original receipt from the U.S. . . . Postal Service.” IFB §§ B.4a(1), c, and d.

Twenty-six bids were received and opened at the July 6 bid opening, including those submitted by Vijaydimon and Oriental.¹ Shortly after bid opening the agency contract specialist received a call from an Oriental representative inquiring whether its bid modification had been received, which it had not. On July 10, before any award had been made, a bid modification from Oriental was received by the agency, sent by certified mail, in an envelope bearing postage metered on June 30 at a Sacramento California post office, with Sacramento postmarks of both June 30 and July 6. On request, Oriental subsequently provided the agency with its original certified mail receipt, which is postmarked June 30 and bears a 20-digit stamped postal identification number that corresponds to the identification number stamped on the Oriental bid modification envelope received by the agency.

Because of the delivery delay and the postmark date discrepancy, the contract specialist brought the envelope to a local post office for examination. She was advised by a post office employee that the postage meter stamp dated June 30 was generated by a postal computer and that the date cannot be altered. The postal employee also noted that the envelope appeared to have gone through the postal system a second time, generating the July 6 postmark, and surmised that this was probably the result of the postal clerk who originally received the envelope having inputted the wrong nine-digit zip code to the bar code at the bottom of the envelope.

The agency considered the modification in evaluating Oriental’s bid, as a result of which Oriental displaced Vijaydimon and one other bidder, Diabex, for a number of the lots. The agency provided bidders with the results and, upon request, provided Vijaydimon and Diabex with copies of the envelope that contained Oriental’s bid modification. Oriental and Diabex then filed agency-level protests. The agency denied these protests because the evidence established that Oriental’s late bid modification had been mailed by certified mail more than 5 days before bid opening and satisfied the solicitation’s late bid modification exception criteria.

Vijaydimon then requested a meeting with agency officials at which it hypothesized that an Oriental employee may have had a post office employee stamp the envelope and Oriental’s certified mail receipt on June 30, then return the envelope to Oriental to permit subsequent mailing with the modification having been prepared after bid opening. The agency subsequently made further inquiries to the postmaster of the Fort Belvoir post office (the local postal facility which had actually handled the

¹ Oriental’s bid was apparently sent from New York by registered mail, return receipt requested.

envelope) regarding the delay in delivery.² She stated that Postal Service policy was that once a U.S. postage meter sticker was placed on an envelope, it was not to be returned to a sender, and indicated that the delay and the two different postmark dates did not appear suspicious and was almost certainly due to post office handling error. She further indicated that there were various potential explanations, including the possibility that the envelope had been found in an empty sorter and recirculated, generating a second postmark, and that delay may also have resulted from the unusually low placement of the zip code bar code.³ On August 2, Vijaydimon filed this protest with our Office.

Vijaydimon complains that as a result of its bid modification, Oriental “became the highest bidder by just the smallest and slightest of margins on many lots” Protest at 2. The protester raises a variety of what it views as discrepancies, from which it surmises that Oriental must have some sort of relationship with a Sacramento postal service employee who enabled Oriental to retrieve the stamped envelope, prepare the modification, and mail it after learning the lot prices at the bid opening. Vijaydimon points to the two different postmark dates on the envelope, the long delay in delivery, the fact that the modification was mailed from Sacramento by certified mail without return receipt requested while the original bid was sent from New York (the location of Oriental’s business address) by registered mail, return receipt requested, and that the envelope postal metering is for 33 cents postage while the weight of the envelope and contents require more postage.⁴ The protester concludes that the bid modification should be rejected because “Oriental should bear any risks associated with the untimely delivery . . . , and the July 6, 2000 postmark should govern the timeliness of this bid.” Protester’s Comments at 1.

It is the responsibility of bidders to ensure that their bids or bid modifications arrive at the designated location by the designated time, and submissions that arrive late must be rejected unless the specific conditions stated in the solicitation for consideration of late bids are met. Timber-Mart Southwest, Inc., B-274677, Jan. 22, 1997, 97-1 CPD ¶ 38 at 2. Here, consistent with the solicitation provision governing the consideration of late bids or modifications, Oriental’s bid modification was

² The agency had initially contacted the U.S. Postal Inspector’s Office in Sacramento, which advised that the matter was outside the purview of the Inspector’s office and suggested that the agency further discuss the matter with the local post office, which could then request further investigation if it believed that it was warranted.

³ The Fort Belvoir postmaster also forwarded the envelope to the regional postal distribution center at Merrifield, which identified bar code and other envelope errors as the possible causes for the delivery delay and the second postmark.

⁴ The agency states that it weighed the Oriental bid modification envelope with contents on its mail room scales, which indicated that 55 cents was the required postage.

considered because it was mailed by certified mail on June 30, earlier than the fifth calendar day prior to the July 6 bid opening date. The record evidences that the second, July 6, postmark on the envelope reflects that the postal service mishandled the envelope and that it was either routed back through, or a second time within, the Sacramento post office. In its discussions with various postal officials, DLA was consistently advised that the delay and the second postmark appear to have been the result of postal service error, and do not suggest that Oriental somehow regained possession of the June 30 stamped, certified envelope.

Vijaydimon's speculative surmise is premised on its belief that Oriental was able to obtain the June 30 postmark on an envelope that was actually mailed some time after July 6 as a result of action taken in bad faith by a U.S. postal employee. Government officials are presumed to act in good faith and, where a protester contends otherwise, it must provide convincing proof since this Office will not attribute improper motives to government officials on the basis of inference or supposition. ACS Sys. & Eng'g, Inc., B-275439.3, Mar. 31, 1997, 97-1 CPD ¶ 126 at 5. Here, the protester has provided no evidence to support its speculation regarding the alleged actions by an unspecified postal employee, and we see nothing in the record to support the protester's allegation. As to the other alleged discrepancies, they are without probative effect. Certified mail is equally acceptable as regular mail under the solicitation late bid modification exception; we see no relevance to the different mailing origin locations, which may simply reflect mailing of the modification by an Oriental employee on travel; and the envelope postage amount discrepancy is minor and could have resulted from a clerical error or weight underestimate, or reflect a weighing anomaly. As to the allegedly suspicious price reductions, Vijaydimon was awarded more than 40 lots (on several of which Oriental submitted a lower bid), at a total price of \$7,641,865.99, while Oriental was awarded more than 60 lots at a total price of \$6,849,372.17, and our review of Oriental's price modifications does not suggest any indication of prior knowledge of bidding information.

Accordingly, we have no basis to object to the agency's determination to accept Oriental's late bid modification as falling within the certified mail exception prescribed in the solicitation. See Reyes Indus., Inc., B-219348, B-219348.2, Sept. 30, 1985, 85-2 CPD ¶ 366.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel