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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203545

DATE: October 21, 1981

MATTER OF: Condor Industries, Inc.

DIGEST:

1. Telegraphic bid modification which was time stamped by the GSA Communications Center prior to bid opening is not late where the invitation stated that receipt by the GSA Communications Center is deemed to be receipt by the office designated in the solicitation.
2. No legal basis exists to preclude a contract award merely because the low bidder may have submitted a below-cost bid.
3. GAO will not review affirmative determination of responsibility except in limited circumstances.

Condor Industries, Inc. protests the proposed award to Cadillac Products, Inc. of a requirements contract for paper bags under General Services Administration (GSA) invitation for bids No. 5FCC-20-81-043. Condor's bid was the lowest of those read at bid opening, but the next day the contracting officer received a telegraphic modification to Cadillac's bid causing it to be lower than Condor's. Condor challenges the contracting officer's decision to consider Cadillac's modification under the rules and solicitation provisions governing the receipt of telegraphic bid modifications. Condor also believes that Cadillac's modified bid price is unreasonably low.

We deny the protest on the first issue and dismiss the protest on the second.

Bids were to be received at GSA's Region 5 Business Service Center by 3:30 p.m. on April 22, 1981. At 7:53 a.m. the morning after bid opening, the contracting officer

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received a telegram from Cadillac modifying its bid price. The time and date stamped on the telegram as the time and date of its arrival at the Region 5 Communications Center was 2:10 p.m., April 22. The telegram properly was addressed to the Business Service Center, and explicitly noted that the bid modification must reach the "Bid Center" before bid opening at 3:30 p.m. on April 22. Had the Communications Center followed the special procedures established for handling telegraphic bid items, the Communications Center would have notified the Business Service Center, which is located nearby, immediately upon receipt of the bid modification and Business Service Center personnel would have picked up the telegram before the 3:30 p.m. deadline. However, the Communications Center personnel mistakenly routed the telegram through normal, slower channels, resulting in the telegram's arrival to the contracting officer approximately 18 hours after transmission.

The contracting officer accepted Cadillac's bid modification in accordance with clauses 5(b) and 7(b) of GSA Standard Form 33-A, which was incorporated by reference into the solicitation. Clause 5(b) allows telegraphic notification of bid modification if the notice is received before the deadline for the submission of bids. Clause 7(b) permits acceptance of bid modifications which arrive at the place designated in the solicitation after the time set for the submission of bids if it is determined that late receipt was due solely to mishandling by the Government after receipt at the Government installation.

Condor contends that the solicitation makes no provision for the submission of telegraphic bid modifications and thus GSA's acceptance of the modification was improper.

Condor is mistaken. As stated above, Standard Form 33-A was incorporated into the invitation by reference, and clause 5(b) of Standard Form 33-A specifically authorizes telegraphic bid modifications.

Condor also contends that the modification should not be considered because it was received in the place designated in the invitation for bid receipt after bids were opened.

The contracting officer accepted the bid modification because, while she considered it to be late, she concluded that it was mishandled after receipt at GSA. In a report on the protest, however, GSA argues that under the terms of the invitation the modification in fact must be considered to have been received in time. We agree with this position.

For a bid or bid modification to be timely, it simply must be received on time at the place designated in the invitation. Here, clause 30 of GSA Form 1424, which also was incorporated by reference into the solicitation, states that the time stamped on a telegraphic bid modification received at the GSA Communications Center is deemed to be the time that the office designated in the solicitation for the submission of bids receives the modification. Since Cadillac's telegraphic bid modification arrived at the GSA Communications Center before bid opening, as evidenced by the Communications Center time stamp, the modification was not late.

Condor requests that this Office nonetheless investigate the mishandling of Cadillac's telegraphic bid modification from its receipt at the GSA Communications Center to delivery to the contracting officer. Condor suggests that the circumstances evidence an intention by GSA personnel to prejudice Condor in some manner.

We find no evidence in the record to support a finding that GSA acted improperly in this case. As stated above, the record shows that the bid modification mistakenly was routed through the inter-office mail system rather than according to the special procedures established for the immediate relay of such messages from the Communications Center to the bid opening location. Since the modification was received on time, however, the fact that it was mishandled is not relevant to whether it could be considered in the award determination. We do not see how Condor was prejudiced under the circumstances and, therefore, we will not consider the allegation further.

Finally, Condor complains that Cadillac cannot produce the paper bags at its modified bid price.

The submission of a below-cost bid is not a valid basis upon which to preclude an award as long as the bidder can perform the contract at its bid price. Virginia Manufacturing Company, B-202393, July 9, 1981, 81-2 CPD 25. That determination is a matter of the firm's responsibility, and we do not review a contracting officer's affirmative responsibility determination absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Bayou State Trucking Inc.--Reconsideration, B-198850, August 29, 1980, 80-2 CPD 158. Since neither exception applies here, the protest on this issue is dismissed.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States