

DECISION



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

FILE: B-209429

DATE: April 1, 1983

MATTER OF: Canyon Logging Company

DIGEST:

1. Even though firm's bid was misaddressed and initially delivered to the wrong office, bid may properly be considered because the bid was delivered in sufficient time to office identified in solicitation to obtain information and would have been included in the bid opening but for Government action (placing bid in unmarked envelope) which delayed identification of the firm's bid, and Government employee failed to direct bidder to proper office for bid submission.
2. Protester alleges that bid was nonresponsive since certain information provided by firm on the bid form was inaccurate. Agency has determined that response submitted was correct. Under these circumstances, protester has failed to meet its burden of affirmatively proving its allegation.

Canyon Logging Company (Canyon) protests the United States Forest Service, Department of Agriculture's, acceptance of a bid submitted by Cofer & Beck Logging (Cofer & Beck) in connection with the Ninko-Miller Lake Timber Sale. Canyon, the second highest bidder, alleges that Cofer & Beck's high bid was late and is being improperly considered for award.

We deny the protest.

This sale was advertised on August 8, 1982, and the advertisement stated "SEALED bids will be received by the Forest Supervisor, 1935 3rd Avenue East, Kalispell, Montana, at 11:00 a.m., local time at place of bid opening, September 13, 1982." The advertisement concluded by stating that "[f]ull information

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concerning the timber, conditions of sale, and the submission of bids should be obtained from the Glacier View District Ranger, Columbia Falls, Montana, or the Forest Supervisor, Kalispell, Montana."

On Friday, September 10, 1982, 3 days before bid opening, Cofer & Beck's bid was hand-carried to the office of the Glacier View District Ranger at Columbia Falls, Montana. The bid envelope clearly identified it as a bid and was addressed to the "U.S.D.A. Forest Service, Glacier View Ranger District." The envelope bore the sale name, ranger district, bid date, the bid opening time, the name of the bidder and the bidder's address.

Cofer & Beck's bid was accepted by an employee of the Glacier View District Ranger's office. A clerk initialed and dated the envelope and placed it inside an internal mail envelope which was then placed inside an internal routing envelope addressed personally to the bid custodian at the Forest Supervisor's office some 30 miles away.

Cofer & Beck's bid arrived at the Forest Supervisor's mailroom with the morning mail at approximately 9:30 a.m. on Monday, September 13, 1982. It is clear that under routine procedures followed by the Forest Service, the bid was received in sufficient time to be considered at the bid opening. However, it was not recognized as a bid because it had been placed inside two internal envelopes with no indication of its contents appearing on the outside. As a result, Cofer & Beck's bid was not included in the bid opening and Canyon was declared the apparent high bidder. Cofer & Beck's bid was discovered approximately 1 hour and 30 minutes after the scheduled bid opening. The Forest Service determined that only the action of the clerk at the District Ranger's office in putting the bid in two extra envelopes had prevented the bid from being recognized as a bid in the incoming mail and included in the 11 a.m. bid opening. The bid was then opened and determined to be the high bid. Once Canyon was alerted to the situation, it filed this protest on grounds that the bid was late. The sale has not been awarded pending resolution of this bid protest.

In the case of hand-carried bids, the general rule is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. Federal Contracting Corp., Taylor Air Systems, Inc., B-181286, October 25, 1974, 74-2 CPD 229. An exception to this general rule requiring rejection of late hand-carried bids has been made where bid lateness was due to improper Government action and consideration of the late bid would not compromise the integrity of the competitive bid system. LeChase Construction Corporation, B-183609, July 1, 1975, 75-2 CPD 5; 51 Comp. Gen. 69 (1971); and 34 Comp. Gen. 150 (1954).

The Forest Service admits fault in this regard and attributes the lateness of the bid to the fact that one of its employees at the District Ranger's office accepted the bid rather than directing the carrier to the Forest Supervisor's office as designated in the advertisement and also to the fact that one of its clerks put the bid envelope inside of two other envelopes, failing to indicate on the outside that a bid was enclosed. The agency asserts that, if the envelope had been identified as a bid, it would have been included in the bid opening by the bid custodian who checked the incoming mail beforehand. Conversely, the protester asserts that if Cofer & Beck's bid had not been submitted to the wrong location initially, improper action or Government mishandling would not have been possible.

Although it may not be the responsibility of clerks at the District Ranger's office to handle bids, it is evident from the record that the office was sufficiently acquainted with the procurement in question to see that the bid was brought to the attention of the appropriate official prior to bid opening. The bid submitted by Cofer & Beck was clearly marked "Timber Sale Bid" and specifically stated the bid date, bid opening time, the name of the bidder and the bidder's address. In addition, the advertisement advised bidders that information regarding "the submission of bids" could be obtained at the Glacier View Ranger Station. We find this notice placed a duty on the Forest Service to properly advise bidders

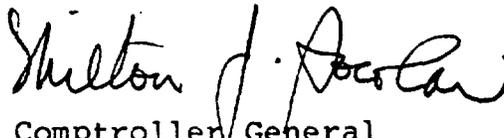
regarding the submission of bids. Therefore, it is our conclusion that the late receipt of the bid was clearly due to the mishandling of the bid by the clerk at the District Ranger's office, since the bid was delivered in sufficient time to have been timely delivered to the Supervisor's office and would have been recognized as a bid and included in the 11 a.m. bid opening if it had been identified as a bid in some manner. Accordingly, it appears that the Government, and not the bidder, should be held primarily responsible for the delay which occurred.

Also, we note that it is unlikely that the integrity of the competitive bid system would be compromised in the instant case. The primary concern is to safeguard the bid system against the possibility of acceptance after bid opening of a subsequently altered or otherwise modified bid. This is virtually impossible because Cofer & Beck's bid was already circulating through the Forest Service's internal mail system 3 days before the other bids were opened.

Finally, Canyon argues that Cofer & Beck's bid was nonresponsive for improperly responding to a question in part II of the Certification of Nonsubstitution of Timber Purchased, Form FS2400-43. The form requires the bidder to submit information concerning the amount of timber cut and removed for the previous calendar year. Cofer & Beck marked "N/A" on this part of the form. Canyon contends that this form was falsely completed by Cofer & Beck since Steve Cofer signed a contract for the sale of timber at Willow-String in the previous year. The Forest Service notes that with respect to the Willow-String sale, Steve Cofer was the sole signer for Silvertip Logging, while Cofer & Beck is a new firm. The Forest Service has not been able to find any evidence that Dennis Beck was in any way affiliated with Silvertip Logging and, accordingly, has determined that Cofer & Beck's "N/A" response was appropriate. Under these circumstances, we need not determine whether the failure of a bidder to properly fill out part II of form FS2400-43 would render the bid nonresponsive since Canyon has failed

to meet its burden of proof that this form was filled out improperly. Crown Laundry & Dry Cleaners, Inc.-- request for reconsideration, B-204178.2, August 9, 1982, 82-2 CPD 115. We therefore summarily deny this protest ground.

The protest is denied.

for 
Comptroller General
of the United States