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DECISION

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

FILE: B-214029 **DATE:** July 10, 1984

MATTER OF: T. E. DeLoss Equipment Rentals

DIGEST:

1. Where wrongful government action, i.e., affirmative government action such as improper or conflicting delivery instructions, is the paramount cause for late receipt of a hand-carried bid, late hand-carried bid may be considered where it would not compromise the integrity of the competititve bidding system.

2. Where there is a conflict of fact and protester's declaration is supported by no other evidence, protester has failed to meet its burden of proof and agency's position will be accepted.

3. Traffic delays do not relieve bidder from responsibility for the timely delivery of its bid.

T. E. DeLoss Equipment Rentals (DeLoss) protests the rejection of its bid as late under invitation for bids (IFB) No. DAKF04-84-B-0002, issued by the National Training Center, Department of the Army (Army), Fort Irwin, California. DeLoss contends that the late bid was caused by the Army failing to warn bidders of a detour on the access road to the fort and to properly staff the desk at which the bids were stamped in.

For the reasons discussed below, the protest is denied.

The IFB was issued on November 9, 1983. After several amendments, the IFB set a bid opening time and date of 2 p.m. on December 19, 1983. Hand-carried bids were to be received at the contracting division, building 493, Fort Irwin, before the time and date set for the bid opening.

DeLoss states that on the date of the bid opening, his trip to the fort was prolonged 10 to 20 minutes by a detour on the bypass road to the fort. Furthermore, DeLoss

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contends that upon arriving at the contracting division at 1:59 p.m., he found no one attending the reception desk to stamp his bid. He claims that by the time he hailed a woman over to the desk, the clock changed to 2:01 p.m. He attended the bid opening and was informed, prior to the opening of bids, that his bid was late.

DeLoss alleges that the Army had a duty to maintain the bypass road and/or apprise bidders of the extraordinary conditions arising from the detour and that the Army primarily was at fault for not maintaining a receptionist at the desk to stamp DeLoss' bid at 2 p.m. Further, DeLoss argues that the acceptance of its low bid would not prejudice other bidders as DeLoss submitted his bid to the contracting officer prior to the opening of any bids and the receipt of its bid 1 minute late is not "material" within the meaning of Defense Acquisition Regulation (DAR), § 2-301(a), reprinted in 32 C.F.R. pts. 1-39 (1983).

The Army contends that it had no duty to warn of road conditions, DeLoss should have known of the detour as it had been in use since November 1, 1983, and the reception desk was attended when DeLoss arrived late with his bid.

Generally, it is the bidder's responsibility to assure timely arrival of its bid at the place of bid opening. However, a late hand-carried bid may be considered where it is shown that wrongful or improper government action was the paramount cause of late receipt and consideration of the late bid would not compromise the integrity of the competitive bidding system. Baeten Construction Co., B-210681, Aug. 12, 1983, 83-2 C.P.D. ¶ 203. Wrongful government action may be defined as affirmative government action that makes timely delivery of the hand-carried bid to the bid opening location impossible, such as improper or conflicting delivery instructions. Key Airlines, B-214122, Feb. 27, 1984, 84-1 C.P.D. ¶ 242. Such wrongful government action has not been shown here.

As to wrongful government action, DeLoss points to the extraordinary condition of the bypass road and the absence of personnel from the reception desk. Even if DeLoss proved the extraordinary condition of the road, we have held that traffic delays do not relieve the bidder from responsibility for the timely delivery of its bid. See Briggs Engineering and Testing Co., Inc., B-192943, Oct. 3, 1978, 78-2 C.P.D. ¶ 256; V.J. Gautieri; Inc., B-181720, Sept. 17, 1974, 74-2 C.P.D. ¶ 173.

We have recognized DeLoss' assertion that a late bid should be accepted because it was submitted prior to the bid opening and would not prejudice other bidders where there was evidence of government mishandling of the bid. See, e.g., Saint Louis Tuckpointing and Painting Co., Inc., B-212351.2, Nov. 18, 1983, 83-2 C.P.D. ¶ 588 (Park Service failed to specify bid opening room in IFB or post signs at the location directing bidders); Baeten Construction Co., B-210681, supra (misdirection of bidder by authorized representative of contracting officer); Canyon Logging Company, B-209429, Apr. 1, 1983, 83-1 C.P.D.¶ 343 (Forest Service employee placed bid inside two unmarked envelopes). However, this must be weighed against the statement of Army personnel that the reception desk was attended. Where, as here, there is a conflict of fact and the protester's position is supported by no other evidence, we conclude that the protester has failed to meet its burden of proof, and we will accept the agency's position. Elrich Construction Co., Inc., B-212040.3, Oct. 12, 1983, 83-2 C.P.D. ¶ 455; Maceto, Inc., B-207878, Sept. 30, 1982, 82-2 C.P.D. ¶ 300. Since DeLoss has failed to prove that wrongful government action was the paramount cause for the lateness of his bid, he may not claim the benefit of his assertion.

Finally, we believe DeLoss misreads the materiality element of DAR, § 2-301. Subsection (a) of that section reads:

> "(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

DAR, § 2-302, states that "[b]ids shall be submitted so as to be received in the office designated in the invitation for bid not later than the exact time set for the opening of bids." (Emphasis added.) While DeLoss contends that the 1 minute was immaterial, our Office has upheld the rejection of a hand-carried bid which was less than 1 minute late. 51 Comp. Gen. 173 (1971).

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The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States