

DECISION



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

FILE: B-218536

DATE: April 19, 1985

MATTER OF: J.E. Steigerwald Company, Inc.

DIGEST:

1. Initial protest to the agency alleging that amended bid opening date allowed bidders insufficient time in which to prepare and submit their bids was untimely, and thus cannot form the basis of a subsequent protest to GAO, where not filed until after bid opening. Bidder was not entitled to wait until after learning whether its bid was timely received, since this deprived agency of the opportunity to take corrective action, such as extending the bid opening date, prior to when bids were opened and competitors' prices exposed.
2. Bid delivered by commercial carrier to agency installation at 4:45 p.m. on February 18, 1985, but not delivered in the usual course of internal agency mail to the depository specified in the solicitation for receipt of hand-carried bids until after opening at 10 a.m. on February 20, 1985, is late. Since the record suggests that the protester may have significantly contributed to the late receipt, inasmuch as the protester misaddressed the bid package and has not claimed that the package was identified or clearly marked so as to inform any agency personnel that immediate delivery to the depository was required, and there has been no showing that wrongful government action was the paramount cause of late receipt, the bid may not be considered for award.
3. Alleged delay in notifying bidder of rejection of its bid as late constitutes at most a procedural deficiency that has no bearing upon the validity of the award.

J.E. Steigerwald Company, Inc. (Steigerwald), protests the award of a contract to American Marine Decking Systems (American) under invitation for bids No. N00244-85-R-0061, issued by the Department of the Navy's (Navy) Naval Supply

Center (NSC) at San Diego, California. Steigerwald alleges that the Navy first failed to allow sufficient time for bidders to consider an amendment to the solicitation and to submit timely bids and then improperly rejected Steigerwald's bid as late.

We dismiss the protest without requiring the submission of an agency report pursuant to section 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because, on its face, the protest is without merit.

On either February 8, 1985, according to the agency, or February 11, according to Steigerwald, the Navy advised the protester by telephone that it was amending the solicitation. Steigerwald informs us that the amendment, which the Navy mailed on February 11, made material changes to the solicitation and extended bid opening from February 15 to February 20 at 10 a.m.

Steigerwald alleges that its office in Baltimore, Maryland, did not receive the amendment until Saturday, February 16, and that it was unable to consider the amendment and modify its prepared bid accordingly until the next business day, Monday, February 18. Moreover, since Monday was a federal holiday and Steigerwald did not believe that a bid mailed the next day would arrive in time for the February 20 bid opening, the firm instead dispatched its bid by commercial carrier on February 18.

The solicitation provided that bids would be "received at the place specified in Item 8, or if handcarried in the depository listed in NSC, BLDG. 1, 2ND FLOOR until 10 AM local time 2-15-85." Item 8 referred bidders to item 7, which provided the address of "NAVAL SUPPLY CENTER, CODE 201, 927 NORTH HARBOR DRIVE, SAN DIEGO, CALIFORNIA 92132."

Although Steigerwald's bid package arrived at NSC 4:45 p.m. on February 18, the Navy has explained that since NSC was closed for a federal holiday that day, the bid package was delivered to building 12 at NSC. Further, according to the Navy, the bid package was "not delivered in the usual course of internal mail at the proper place set for bid opening until" after the 10 a.m., February 20, bid opening.

The Navy subsequently rejected Steigerwald's bid as late and on March 1 made award to American. Steigerwald informs us that it first learned of the rejection of its

bid during a telephone conversation with contracting officials on March 12 and that it did not receive official notification, dated March 21, until March 28. After the March 12 conversation, Steigerwald filed a protest with the agency. When that protest was denied, it filed this protest with our Office.

Steigerwald initially argues that the revised February 20 bid opening date specified by the February 11 amendment allowed bidders insufficient time in which to consider the amendment and to prepare and submit their bids. Steigerwald claims that, therefore, it was forced to rely on a commercial carrier rather than on the United States Postal Service for the delivery of its bid.

Steigerwald recognizes that section 21.2 of our Bid Protest Regulations, 4 C.F.R. § 21.2 (1985), requires that protests based upon alleged improprieties apparent on the face of a solicitation be filed prior to bid opening. Nevertheless, Steigerwald believes that it would be unreasonable to apply this requirement here because Steigerwald was not aware until after bid opening that the "corrective measures" it took, dispatching its bid by commercial carrier, were unsuccessful.

We disagree. We require protests against alleged improprieties apparent on the face of a solicitation to be filed prior to bid opening so that corrective action, if appropriate, may be taken prior to when bids are opened and competitors' prices exposed. See Don Strickland's Consultant and Advisory Service, B-214733, Apr. 11, 1984, 84-1 C.P.D. ¶ 412. The revised bid opening date was apparent to Steigerwald at least as early as February 16, if not February 8 or 11. By waiting until after bid opening to protest an alleged impropriety apparent on the face of the solicitation, Steigerwald deprived the Navy of the opportunity further to extend the bid opening date if it found merit in the concerns expressed by Steigerwald.

Since Steigerwald's initial protest to the agency concerning the bid opening date was untimely, we will not consider its subsequent protest to our Office in this regard. 4 C.F.R. § 21.2(a)(3).

Steigerwald next alleges that the Navy erred in rejecting its bid as late. Steigerwald indicates that it does not consider its bid to have been late since the bid was delivered to NSC prior to bid opening. Moreover, argues Steigerwald, even if its bid was late, the Navy should have considered the bid for award because the delay was caused by government mishandling.

An offer is late if it does not arrive at the office designated in the solicitation for the receipt of bids by the time specified. See Olympia USA Inc., B-215139, May 21, 1984, 84-1, C.P.D. ¶ 535. Receipt at other places, such as the agency mailroom or central receiving area, see American McGaw Division, American Hospital Supply Corporation, B-217415, Mar. 26, 1985, 85-1 C.P.D. ¶ _____; Photonics Technology, Inc., B-211234, Apr. 11, 1983, 83-1 C.P.D. ¶ 378, or the agency loading dock, see Future Tech, B-210601, Mar. 1, 1983, 83-1 C.P.D. ¶ 217, is insufficient.

Bids delivered by commercial carrier are regarded as hand-carried bids. See Olympia USA Inc., B-215139, supra, 84-1 C.P.D. ¶ 535 at 2. Since Steigerwald's bid was not received at the place designated for receipt of hand-carried bids, the depository on the second floor of building 1, by 10 a.m., February 20, the bid was late. See Edison Electronics Division, Armtec Industries, Inc., B-202342, June 10, 1981, 81-1 C.P.D. ¶ 478.

As a general rule, a bidder is responsible for delivering his bid to the proper place at the proper time. While the Federal Acquisition Regulation, 48 C.F.R. § 14.304-1 (1984), provides for the consideration of late bids sent by mail in certain circumstances, this exception does not apply here because bids sent by commercial carrier are not considered to have been sent by mail. Cf. Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 C.P.D. ¶ _____.

Nevertheless, we have allowed late hand-carried bids to be considered where it can be shown that the government's wrongful or improper action was the paramount cause for the late arrival at the designated place and that consideration of the late bid would not otherwise compromise the integrity of the competitive system. Wrongful government action in this context can be defined as affirmative government action, such as improper or conflicting delivery instructions, that makes timely delivery of the hand-carried bid to the bid opening

location impossible. See T.E. DeLoss Equipment Rentals, B-214029, July 10, 1984, 84-2 C.P.D. ¶ 35; cf. American McGaw Division, American Hospital Supply Corporation, B-217415, supra, 85-1 C.P.D. ¶ _____ at 2-3.

In this regard, we have held that a late bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering the bid to the proper place by the proper time. See Visar Company, Inc., 62 Comp. Gen. 148 (1983), 83-1 C.P.D. ¶ 100.

The record here suggests that Steigerwald may have significantly contributed to the delay. As indicated above, the solicitation required that hand-carried bids be delivered to the depository on the second floor of building 1 at NSC. Steigerwald, however, informs us that it chose to have its bid package delivered to the address set forth in item 8, i.e., the general mailing address of "NAVAL SUPPLY CENTER, CODE 201, 927 NORTH HARBOR DRIVE." The receipt issued by the commercial carrier supports Steigerwald's account in this regard, in that the designated address includes no reference to the depository on the second floor of building 1. Moreover, the receipt indicates that the bid package was to be delivered to NSC at "937 N. Harbor Drive" instead of 927 North Harbor Drive. Finally, we note that Steigerwald has not claimed that the bid package was identified or clearly marked so as to inform any personnel at NSC that immediate delivery to the depository was required. Cf. American McGaw Division, American Hospital Supply Corporation, B-217415, supra, 85-1 C.P.D. ¶ _____ at 2-3; Photonics Technology, Inc., B-211234, supra, 83-1 C.P.D. ¶ 378 at 3; Lloyd S. Hockema, Inc., B-199682, Nov. 12, 1980, 80-2 C.P.D. ¶ 356.

Accordingly, we are unable to conclude that the Navy improperly rejected Steigerwald's bid as late.

Although the protester also alleges that the Navy failed to notify it in a timely manner of the rejection of its bid, it has demonstrated no prejudice to it as a result of any delay in notification. Moreover, we have previously held that a delay in furnishing bid results is a procedural deficiency that has no bearing upon the validity of the

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award. Triumph United Corporation, B-216546, Oct. 18,
1984, 84-2 C.P.D. ¶ 419.

The protest is dismissed.



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