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DECISION



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

FILE: B-219348, B-219348.2 **DATE:** September 30, 1985
MATTER OF: Reyes Industries, Inc.

DIGEST:

Contracting officer's determination to cancel an IFB based on speculation that a modification which made the protester's bid low may not have been mailed when a certified mail receipt shows it was mailed lacks a reasonable basis since the Postal Service found no evidence of irregularities.

Reyes Industries, Inc. (Reyes), protests the Defense General Supply Center's (DGSC) cancellation of invitation for bids (IFB) No. DLA40C-85-B-5244, on May 29, 1985, and its resolicitation of the requirement.

DGSC canceled the solicitation because of its doubt concerning the authenticity of evidence submitted by the protester to establish the date of mailing a price modification to its bid. The agency concluded that, in view of its doubt, the integrity of the competitive system would be better served by canceling the solicitation than by an award to the protester. Reyes, on the other hand, argues that the cancellation is arbitrary.

We sustain the protest.

At bid opening, on March 21, 1985, the low bidder was Sierra Corporation at \$34.17 per unit, f.o.b. destination, for 55,000 folding cots. Reyes was second low at \$34.60 per unit, f.o.b. destination (Reyes also submitted an f.o.b. origin bid). A few hours after bid opening, Reyes called the DGSC buyer to advise that on March 12 it had sent a bid modification which lowered its price. On March 26, the contracting officer received Reyes' certified letter of March 12, wherein Reyes lowered its f.o.b. destination price from \$34.60 per unit to \$33.95 per unit. Reyes also submitted a receipt for certified mail with a postmark date of March 12, 1985.

Under the IFB late bid clause, a late bid or late bid modification may be considered, provided it is received

prior to award and it was mailed by registered or certified mail at least 5 days prior to the bid opening. The clause further provides that the date of mailing of a late bid or bid modification sent by registered or certified mail is the postmark on the envelope or on the original receipt.

Although the Reyes' bid modification qualified for consideration under the late bid clause, the contracting officer became suspicious of the circumstances surrounding its submission. He noted that the March 12 modification apparently took 14 days to arrive from Texas to DGSC Headquarters at Richmond, Virginia, in contrast to the Reyes bid itself, which took only 3 days to arrive. He further noted that the postage meter impression on the envelope was from Irving, Texas, dated March 12, while the receipt showed a Richardson, Texas, postmark dated March 12.

As a result of these suspicions, the DGSC buyer called the Irving, Texas Post Office, and reports being advised by a Postal Service employee that a letter metered in Irving and later certified in Richardson should have been remetered in Richardson.

In addition, the contracting officer noted that a similar situation involving Reyes and the DGSC installation arose in June 1984 (IFB No. DLA400-84-B-5824). In that case, when bids were opened on June 6, 1984, Sierra was low for the same item at \$36.53, and Reyes was second low at \$36.60. Both bidders claimed preference as labor surplus area (LSA) concerns. On June 13, Reyes called the agency to report that its bid had been revised before bid opening to \$36.40, in a bid modification letter dated May 31. In a confirming letter, Reyes forwarded a copy of its May 31 letter and a copy of a certified mail receipt dated June 1, from Richardson, Texas. DGSC never received the original May 31 bid modification letter. As it turned out, however, it did not matter. DGSC determined that Sierra did not qualify as an LSA concern for that procurement, so that its bid of \$36.53 was evaluated at \$37.33, using the 2.2 percent factor for non-LSA bidders. This left Reyes the low bidder at \$36.60, and its price reduction was then accepted.

Because of his concerns, the contracting officer asked the Postal Service to examine Reyes' bid modification mailing to determine if any irregularities existed.

An examination was conducted, and essentially the Postal Service reported that it did not find any irregularities.

Nevertheless, the contracting officer remained suspicious. He felt that, in light of all the circumstances, a serious question arose as to where or when the Reyes bid modification was actually mailed. He decided to cancel the solicitation and resolicit the requirement under negotiated procedures.

In its protest to our Office, Reyes states that the facts surrounding the March 12 mailing are not unusual. It explains that its March 12 bid modification was metered at a private meter machine in Irving and then delivered to, and certified at, a United States Post Office in Richardson, Texas, when Reyes' president dropped the letter off on his way to take care of other business.

As for the alleged failure of the Richardson Post Office to have remetered the letter, Reyes has submitted a statement dated July 11, 1985, cosigned by Mr. Rod Currey, the Irving Postal Service employee who was called by the DGSC buyer, and by Reyes' president. The statement indicates that the DGSC buyer misunderstood Mr. Currey's response, which concerned the use of a postage meter for a letter at one post office and then having the letter certified and mailed at another post office. According to the statement, Mr. Currey responded that such a letter should have been certified and mailed at the same post office. The statement concludes that in the case of a letter metered by a private meter machine, remetering is not required and that it is "not uncommon for a piece of mail which is metered in one city to be certified and mailed at a post office in another city."

A decision to cancel an IFB after bid opening will not be disturbed unless the decision lacks a reasonable basis. Jackson Marine Companies, B-212852, et al., April 10, 1984, 84-1 CPD ¶ 402. We think the decision to cancel this IFB lacked a reasonable basis.

There is absolutely no evidence of any irregularities connected with the mailing of Reyes' March 12 bid modification. While Sierra in its comments to the protest has suggested that it is relatively easy for a bidder to buy a postmark stamp or to mail a certified letter to itself and reuse the envelope, the Postal Service investigated these possibilities and found that the Reyes bid modification

envelope had not been previously used and that the postmark on the Reyes receipt appears to have been made by a Richardson Post Office stamp.

Specifically, the Postal Service Criminal Laboratory report of May 3, 1985, concluded that the postmark on Reyes' certificate is generally consistent with the hand stamps used at the Richardson Post Office, but that variations do exist which require further examination prior to any positive finding. The contracting officer reported to us that the laboratory was asked to conduct this examination. DGSC has not reported to us any further on the matter, but Reyes reports that the Postal Service investigation was completed and no irregularity in the postmark was found.

Moreover, Reyes has refuted the agency's position that the March 12 envelope should have been remetered at the Richardson Post Office. Thus it appears that the letter was properly handled at the post office.

DGSC's refusal to make award to Reyes under the IFB boils down to the fact that Reyes was involved in a similar bid modification situation last year. In the agency's opinion, it is extremely unlikely that Reyes would have mailed a bid modification that was not delivered in 1984, and then have mailed another bid modification that was delivered 14 days after mailing in 1985, both of which resulted in Reyes offering the lowest apparent bid prices. The agency therefore questions whether Reyes' bid modification was actually mailed on March 12.

We can understand the agency's initial concern with the mailing of Reyes' bid modification, and its request for an investigation by the Postal Service. Once the Postal Service completed its investigation and found no irregularities, the agency's concern should have been resolved in favor of considering the modification. DGSC's refusal to accept Reyes' modification at this point is based solely on speculation and suspicion. Since Reyes has submitted the requisite evidence of timely mailing, the bid should be considered as modified.

Accordingly, we recommend that the resolicitation be canceled, that the IFR be reinstated, and that an award be made to Reyes, if otherwise proper. ,

for *Milton J. Douglas*
Comptroller General
of the United States