

DECISION

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

FILE: B-220663; B-220664

DATE: November 27, 1985

MATTER OF: Nanco Labs Inc.

DIGEST:

Bids delivered by commercial carrier are considered to be hand-carried. Protest is denied where bidder's failure to address its bid package to the hand-carried address is the paramount cause of late receipt; therefore, bids were properly rejected as late.

Nanco Labs Inc., protests the rejection of its bids as late under invitations for bids (IFBs) Nos. WA-85J664 and WA-85J680 issued by the United States Environmental Protection Agency (EPA) for certain chemical analytical services. Nanco contends that the EPA mishandled the bid package after its timely receipt at the proper location. Alternatively, Nanco contends that the IFBs' delivery provisions were imprecise and ambiguous and were therefore the paramount cause of the alleged late receipt.

We deny the protests.

Bid opening was scheduled for October 1, 1985, at 11:00 a.m. for IFB WA-85J664 and at 11:30 a.m. the same day for IFB WA-85J680. Both solicitations contained the standard clauses regarding the conditions under which a late bid would be considered. The IFBs advised bidders that sealed bids would "be received at the place specified in Item 8, or if handcarried, in the depository listed in Item 7." The address in item 8 was:

"Environmental Protection Agency
BID/PROPOSAL ROOM (PM 214F)
401 M St. S.W.
Washington, D.C. 20460"

and for item 7:

"Environmental Protection Agency
BID/PROPOSAL ROOM, 3rd Floor
499 South Capitol Street, SW
Washington, D.C. 20003"

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On September 30, 1985, the protester sent its bids by Federal Express, a commercial carrier. The Federal Express envelope, which did not indicate that bids were enclosed, was addressed to:

"Marian Bernd
U.S. Environmental Protection Agency
BID/PROPOSAL ROOM 401 M St. SW (PM214F)
Washington, D.C. 20460"

The Federal Express record of delivery indicates that the bid package was delivered to 401 M Street, S.W. on October 1, 1985, at 9:20 a.m. The bids were later time/date stamped in the bid opening room at 12:35 p.m. The contracting officer rejected the bids as late because none of the exceptions in the IFBs' late bid clauses applied.

According to Nanco, the paramount cause of lateness was the EPA's mishandling of its bid package in the process of rerouting the bids from 401 M Street, S.W. to 499 South Capitol Street, SW. The protester also alleges that timely delivery of the bid package was hampered by the "ambiguous and misleading character of the IFBs." Nanco states that it interpreted the words "or if handcarried" to mean "personal delivery by one of our employees," therefore, it concluded that the address in item 8 was applicable for delivery by commercial carrier.

It is a basic tenet of government procurement law that bidders are responsible for the timely delivery of their bids, and the late delivery of a bid generally requires its rejection. See the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1 (1984); S & W Enterprises, Inc., B-219716, Aug. 19, 1985, 85-2 C.P.D. ¶ 192, and cases cited therein. A bid that is sent by commercial carrier--the protester's agent--is regarded as a hand-carried bid. American McGaw Division, American Hospital Supply Corp., B-217415, Mar. 26, 1985, 85-1 C.P.D. ¶ 351 at 2. We have allowed late hand-carried bids to be considered if the paramount cause of delay is wrongful government action and if consideration of the bids would not compromise the integrity of the competitive procurement system. Id. See also Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 C.P.D. ¶ 330 at 2. Under these circumstances, "wrongful government action" is some affirmative action on the government's part, such as improper or conflicting delivery instructions, which make timely delivery of the

hand-carried bid impossible. See T. E. DeLoss Equipment Rentals, B-214029, July 10, 1984, 84-2 C.P.D. ¶ 35. Nanco has not presented any evidence that government employees misdirected the courier or of any other impropriety that would fall within this exception.

Nanco also asserts that the late receipt of its bids is attributable to the IFBs' confusing and ambiguous terms with respect to use of the address in item 7 vis-a-vis the address in item 8. We do not find any ambiguity in the IFBs. The address shown in item 7 is clearly designated by the IFBs as the "Hand-carried Address." The fact that Nanco interpreted "hand-carried" to mean delivery only by one of its employees does not preclude delivery by another agent of the protester, such as a commercial courier. We will find an IFB ambiguous only if more than one reasonable interpretation is possible. See Flexfab, Inc., B-213327, Dec. 16, 1983, 83-2 C.P.D. ¶ 701. In our view, it is well established that hand-carried bids are those which are not sent by mail. See FAR, 48 C.F.R. § 52.214-7. In this regard, Nanco cites several of our decisions for the proposition that there is some confusion with respect to the meaning of "hand-carried." For example, the protester reads our decision in Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 C.P.D. ¶ 332, as making a distinction between a late hand-carried bid and a late bid delivered by commercial carrier. In that case we resolved the question of what evidence is acceptable to establish the time of receipt of a bid at a government installation. In doing so, we restated the applicable legal principles surrounding delivery of a bid that is hand-carried, i.e., delivery through an employee or a commercial carrier that contracts with a protester to effect delivery on its behalf.

Where, as here, the protester dispatches its agent--a commercial carrier--to an address other than that designated for hand-carried bids, it bears the risk of untimely receipt and the time spent rerouting the bid package to the proper location is not the paramount cause for the late receipt. See S & W Enterprises, Inc., B-219716, supra.

Accordingly, Nanco's failure to deliver its bid package directly to the depository was the paramount cause for the late arrival of Nanco's hand-carried bids. Therefore, the bids were properly rejected as late.

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The protests are denied.

for Seymour Afros
Harry R. Van Cleve
General Counsel