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DECISION



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

FILE: B-220663.2; B-220664.2 **DATE:** January 15, 1986

MATTER OF: Nanco Labs, Inc.--Reconsideration

DIGEST:

Prior decision holding that late bid delivered by commercial carrier was properly rejected where paramount cause of late receipt was bidder's failure to address its bid package to the hand-carried bid address is affirmed in the absence of any evidence that the decision was based upon errors of fact or law.

Nanco Labs, Inc. (Nanco), requests reconsideration of our decision Nanco Labs, Inc., B-220663, B-220664, Nov. 27, 1985, 85-2 C.P.D. ¶ , in which we denied Nanco's protest against the Environmental Protection Agency's (EPA) rejection of its bids as late under invitations for bids (IFB's) Nos. WA-85J664 and WA-85J680.

Nanco had contended that its bids delivered by commercial carrier were mishandled by the EPA after their timely receipt at the location established for receipt of bids. Alternatively, Nanco urged that imprecision and ambiguities in the IFB's bid delivery provisions were the paramount cause of the bid's late receipt. Our prior decision held, contrary to Nanco's contentions, that Nanco's failure to address its bid package to the specified hand-carried (bid depository) address was the paramount cause of the late receipt and that the bid was properly rejected.

Nanco now argues that GAO failed to consider (1) Nanco's arguments that the bid was timely delivered under its reading of the IFB, and (2) its argument that the term "hand-carried," as used in the IFB, is ambiguous. Nanco asserts that its bids should not have been rejected.

We affirm our prior decision.

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The IFB's contained two addresses in blocks (items) 7 and 8. Item 7 was a depository address, while item 8 was a mailroom address. The IFB's 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." Nanco's sealed bid carried the item 8 mailroom address despite the fact that Nanco elected to send it by Federal Express, a commercial carrier, instead of mailing it. Federal Express delivered the bid package to the mailroom prior to bid opening; however, the bid package did not arrive at the bid opening room until after the designated bid opening time.

Nanco reads the "or" in the above-quoted provision as giving it the option of sending its bid package by commercial carrier to either the depository address or the mailroom address. From this reading, Nanco argues that pre-bid-opening arrival at either location renders a bid timely. We have previously considered and rejected this argument on the ground that such an interpretation is unreasonable because the clear meaning of the provision is disjunctive rather than alternative. Edison Electronics Division, Armtec Industries, Inc., B-202342, June 10, 1981, 81-1 C.P.D. ¶ 478 at 2. Thus, contrary to Nanco's view, hand-carried bids could not be delivered to either location. Under the IFB's, Nanco was required to deliver its hand-carried bid to the depository. Thus, our previous finding was correct--that Nanco's failure to have its bids delivered to the depository as required by the IFB's was the paramount cause of the bids' late receipt.

Notwithstanding the clear IFB language, Nanco argues that it is good policy to allow commercial carriers making hand-carried deliveries the option of delivery at either of two locations because such a procedure would allow for last-minute changes in the physical location of the bid depository. We find no merit in this argument. If a change of depository location is necessary, the contracting agency should either telephonically advise all known bidders of the change or postpone bid opening and issue a written amendment advising of the change. Dale Woods, B-209459, Apr. 13, 1983, 83-1 C.P.D. ¶ 396.

We likewise find no merit in Nanco's assertion that the term "hand-carried," as used in the IFB's, is ambiguous. Nanco contends that it was unclear to Nanco that delivery by a commercial carrier constituted a "hand-carried" bid and, thus, its bids should not have been rejected as late because the bid delivery provision was ambiguous concerning where

commercial carriers should deliver bids. Contrary to Nanco's assertion, we considered Nanco's allegation that the bid delivery provision was ambiguous in our decision. We noted that it is well established that hand-carried bids are those which are not sent by mail, and that the term covers hand-carried deliveries by commercial carriers. We specifically rejected Nanco's contention that there was confusion in our earlier decisions concerning the meaning of "hand-carried." We thus concluded that the protester sent its agent--a commercial carrier--to an address other than that designated for hand-carried bids, that this error was the paramount cause for the late arrival of Nanco's hand-carried bids and that the bids were properly rejected as late. Nanco has not shown this reasoning to be incorrect.

Since Nanco has not established that our decision was based upon any errors of fact or law, it is affirmed.
Fred Schwartz--Reconsideration, B-185507, Apr. 6, 1976, 76-1 C.P.D. ¶ 226.

Harry R. Van Cleve

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General Counsel