



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Martin G. Imbach, Inc.

File: B-224536

Date: February 25, 1987

DIGEST

Where evidence of record establishes only that commercial carrier left bid package at military installation's central mail and receiving office as a result of the routine application of "security measures," and does not show that he made a specific attempt to deliver the parcel to the bid opening room shown on the parcel's address but was refused permission to do so by government personnel, the bid, when received late, should have been rejected since improper government action was not the sole or paramount cause of the bid's late arrival.

DECISION

Martin G. Imbach, Inc., protests the award of a contract by the Naval Research Laboratory (NRL) to Marine Construction Corporation. Imbach, the second low bidder, contends that the low bid of Marine was improperly accepted by NRL since Marine's hand-carried bid arrived approximately 20 minutes after the time set for the opening of bids and improper government action was not the sole or paramount cause of the bid's late receipt.

We sustain the protest.

Invitation for bids (IFB) No. N62477-86-B-2052, issued by the NRL for bulkhead repair and construction, as amended, established bid opening for September 19, 1986, at 2 p.m. With respect to hand-carried bids, the IFB instructed bidders:

"(d) All hand delivered bids must be deposited in the bid box of the Office of the Officer in Charge of Construction, Naval Research Laboratory, Building 34, room 117, Washington, D.C. 20375-5000 prior to the time and date set for bid opening. Any bids submitted by hand after the time set for receipt will not be accepted."

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Additionally, the solicitation contained the standard clauses regarding the conditions under which late bids would be considered. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1 (1986).

Bids were opened as scheduled and, at that time, Imbach was the apparent low bidder with a bid of \$368,600. At approximately 2:19 p.m., on the date set for bid opening, the bid of Marine was deposited in the bid box. Marine's bid was in the amount of \$339,790. On October 1, the contract was awarded to Marine and Imbach protested to our Office shortly thereafter. Imbach maintains that the late receipt of Marine's bid was not solely or principally caused by improper government action, as the Navy concluded, and that Marine's bid, therefore, should have been rejected as late and award made to Imbach as the low, responsive and responsible bidder.

From the documents provided us by the Navy, it appears that Marine placed its bid in a letter-size envelope which was properly addressed and on which Marine placed the red-bordered sticker, supplied with the IFB, which indicated that the content was a "sealed bid" and on which Marine wrote the IFB number and subject, and the time and date of bid opening. Marine then provided this envelope to a commercial carrier, Federal Express, which in turn placed it in a larger, opaque cardboard envelope, on the side of which was a sheet of transparent plastic through which was visible the Federal Express airbill which was addressed to:

Officer in Charge of Construction
Naval Research Laboratory
Building 34, Room 117
Washington, D. C. 20375-5000

There was, therefore, no indication on the exterior of the package that it was a bid required to be delivered to Room 117 of Building 34 prior to 2 p.m. on September 19.

According to delivery records maintained by Federal Express, its truck containing Marine's bid (along with eight other parcels to be delivered to the NRL at that time) arrived at the installation at 10:30 a.m. on the day of bid opening. An NRL vehicle pass issued to the driver of that truck bears a time-date stamp of 10:50 that day.

The Navy states that the Federal Express driver was then directed to proceed to Building 49, the Central Mail and Receiving Office, in accordance with the NRL's "security

measures." It appears that the Federal Express driver deposited Marine's bid, along with the other eight parcels, at Building 49 and then departed the installation. Marine's bid was then processed through the NRL's internal distribution system, insofar as the record reveals, in a routine fashion. It left the Central Mail and Receiving Office at approximately 1:30 p.m., accompanied by a "general receipt" issued by that office. This receipt was signed as of 2:10 p.m. by the clerk for the bid opening room. The inner envelope containing Marine's bid was time-stamped at 2:19 p.m., after the time set for bid opening.

There is no dispute that the provisions of FAR, 48 C.F.R. § 14.304-1, do not apply to the late arrival of this bid since those provisions deal with mailed bids and the bid here was not mailed. As for hand-carried bids, essentially it is the bidder's responsibility to assure that its bid is received at the proper place at the proper time, and in the vast majority of instances the rejection of late hand-carried bids is warranted. We have upheld the rejection of a hand-carried bid as late, for example, where for reasons of its own convenience a commercial carrier deposited a bid along with other parcels on a loading dock, as a result of which the bid was committed to the agency's internal mail distribution system and failed to arrive on time. See Work System Design, Inc., B-223942, Nov. 26, 1986, 86-2 C.P.D. ¶ 613. -

A different result obtains, however, when the delivery person attempts to deliver a hand-carried bid to the place designated for receipt but is prevented by government personnel from doing so, and that action on the part of the government is the sole or paramount cause of the bid's late receipt.

In Scot, Inc., 57 Comp. Gen. 119 (1977), 77-2 C.P.D. ¶ 425, a leading case discussed by both parties to this protest, a Federal Express courier arrived at Redstone Arsenal with a parcel which was properly addressed, identified as a bid, and which bore on the wrapper the bid number, opening date and time, and delivery destination. The courier attempted to deliver Scot's bid to the bid opening office identified in the address but was not permitted to do so by government personnel, who directed the courier to deliver the package to the Central Receiving Warehouse, in accordance with security regulations. The bid was then forwarded from the warehouse to the bid opening room through normal channels and was received late.

We sustained Scot's protest of the rejection of its bid as late on the basis that the government acted improperly in not permitting the courier to deliver the bid to the location specified in the IFB for its receipt, as a result of which the courier was forced to deliver the package to the Central Receiving Warehouse, even though the full text of the applicable security regulations did not mandate delivery of bid packages to the warehouse but permitted commercial carriers to deliver shipments to other activities at the Arsenal, after first reporting to the warehouse.

The Navy argues that the circumstances of this case are similar to those in Scot; the protester disagrees. Based on our review of the record, we think the facts more resemble those cases in which a bid package is deposited at a central warehouse or loading dock at the carrier's initiative than they do Scot, in which an attempted delivery to the bid opening room was prevented by government security personnel.

The Navy states that it was "security measures" which prevented the Federal Express driver from delivering Marine's bid to the location to which it was addressed and which required that he proceed directly to Building 49, the Central Mailing and Receiving Office. Although on the surface this assertion appears to resemble the situation in Scot, it is not supported by the record.

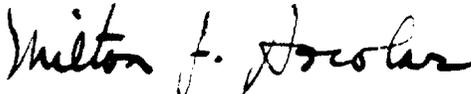
The record in this case suggests nothing more than that the driver of the Federal Express truck, a commercial delivery vehicle, was upon arrival at the installation routinely issued a pass for the Central Mail and Receiving Office, where he deposited the protester's bid along with eight other parcels. There is no evidence that the driver brought to any security guard's attention the fact that he had a parcel destined for the contracting office in Building 34, or specifically asked for permission to go to that Building and was told he could visit only the Central Mail and Receiving Office in Building 49. While we do not dispute the Navy's assertion that visitors could not "travel freely" throughout the installation, it does appear it was possible to obtain a pass for destinations other than Building 49 upon requesting one as evidenced by the protester's successful delivery of its bid to the bid box in Room 117, Building 34, after asking for a pass permitting it to go to that building. We simply believe the person who delivered Marine's bid did not recognize it as such or understand there to be any particular urgency to its delivery different from the other eight parcels to be delivered to the laboratory at the same time and

that it was that circumstance, and not improper government action, which was the paramount cause of the bid's late delivery.

We are therefore of the opinion that Marine's bid should have been rejected and the protest accordingly is sustained.

We are informed by the agency that performance of the contract, which was awarded to Marine on October 1, has been suspended. In light of our decision, we are recommending to the Secretary of the Navy that the contract be terminated for convenience and the award be made to Martin G. Imbach, Inc., if otherwise appropriate. See Howard Management Group, B-221899, July 3, 1986, 86-2 C.P.D. ¶ 28.

The protest is sustained.

for 
Comptroller General
of the United States