



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gem Engineering Company
File: B-227151
Date: August 4, 1987

DIGEST

1. That portion of a post-bid-opening protest which concerns an alleged impropriety in the terms of the solicitation, apparent to protester prior to time of bid opening, is dismissed as untimely.
2. Where the protester used a commercial courier to hand deliver a bid and the courier delivered the bid to the agency's central receiving office, the late arrival of the bid in the bid opening room 3-1/2 hours later will not be attributed to wrongful government action where the courier made no attempt to deliver the bid to the proper address.

DECISION

Gem Engineering Company protests the rejection of the bid it submitted in response to solicitation No. N62477-86-B-2057, issued by the Naval Research Laboratory. Gem contends that its bid, which was received in the bid opening room after the deadline for submission of bids, should have been considered for award. We deny the protest.

The invitation for bids (IFB) was issued on April 8, 1987, with the bid opening date set for May 7. The IFB stated that mailed bids were to be addressed to the Officer in Charge of Construction, Naval Research Laboratory, Trailer #811, Washington, D.C. 20375, and that hand-carried bids were to be deposited in the bid box in the office of the Officer in Charge of Construction, Naval Research Laboratory, Building 34, Room 117, Washington, D.C. 20375.

On May 4, 1987, the Navy issued an amendment to the IFB which corrected certain specifications and extended the time for bid opening to May 14 at 2 p.m. The amendment stated that all bidders were required to acknowledge receipt of the amendment prior to bid opening.

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Gem states that although the amendment was issued on May 4, it was not received in Gem's office until May 11. Gem asserts that as a result of the short time between its receipt of the amendment and the due date for submission of bids, it was "forced" to use a commercial courier to send its bid from its home office in Houston, Texas, to the Naval Research Laboratory in Washington, D.C. Despite its use of a commercial courier, Gem addressed its bid to the Office in Charge of Construction, Naval Research Laboratory, Trailer #811, Washington, D.C. 20375--the address designated in the IFB for receipt of mailed bids.

At 10:28 a.m. on May 14, the commercial courier delivered Gem's bid to Building 49 of the Naval Research Laboratory, which serves as the facility's central shipping and receiving office. This location was not the address designated in the IFB for receipt of either mailed or hand-carried bids, nor was it the address on the outside of the package. Subsequently, the bid was transferred to the bid opening room by the Laboratory's internal mail system, but did not arrive until 2:09 p.m.--9 minutes after the deadline for submission of bids. The Navy treated the bid as late and did not consider it for award.

Gem protests that, due to the short time period between its receipt of the amendment and the deadline for submission of bids, it had no choice but to send its bid^{1/} via commercial courier and was thus placed at a competitive disadvantage with regard to bidders located in the Washington, D.C. area. Further, Gem protests that the Navy had adequate time--from 10:28 a.m. to 2 p.m.--to deliver its bid from the central receiving office to the bid opening room, and because it failed to do so, the bid should be considered for award.

Concerning Gem's argument that the terms of the IFB, as amended, placed it at a disadvantage as compared with local bidders because it was forced to submit its bid via a commercial courier, its protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), require that a protest based on alleged improprieties which are

^{1/} The Navy points out that had Gem submitted its bid prior to the issuance of the amendment, it could have acknowledged receipt of the amendment simply by sending a telegram. Since as of May 11, when the protester received the amendment, it had not yet transmitted its bid to the Navy, it sent its entire bid package including acknowledgment of the amendment by commercial courier on May 13, the day before bid opening.

apparent from the solicitation itself must be filed prior to bid opening. See White Office Systems, Inc., B-224252, Oct. 9, 1986, 86-2 C.P.D. ¶ 414. Since the time period allowed for submission of its bid was apparent to Gem at the time it received the amendment, it should have filed its protest prior to the bid opening date. Since it did not, that aspect of its protest is untimely and will not be considered.

Concerning the rest of Gem's protest, our Office has recently considered the issues raised in virtually identical situations and has taken a position contrary to the arguments Gem now makes. See Martin G. Imbach, Inc., B-224536, Feb. 25, 1987, 87-1 C.P.D. ¶ 215; Queen City, Inc., B-223515, Sept. 23, 1986, 86-2 C.P.D. ¶ 337. Specifically, we have held that an offeror has the responsibility to deliver its bid to the proper place at the proper time and late delivery of a bid generally requires rejection of the bid. See Martin G. Imbach, Inc., B-224536, *supra*; Queen City, Inc., B-223515, *supra*; Hi-Grade Logging, Inc., B-222230 *et al.*, June 3, 1986, 86-1 C.P.D. ¶ 514. We have also repeatedly held that a bid sent by commercial courier--the protester's agent--is considered to be a hand-carried bid, and that the IFB's late bid provisions apply only to mailed bids, not hand-carried bids. See American McGaw Division, American Hospital Supply Corp., B-217415, Mar. 26, 1985, 85-1 C.P.D. ¶ 351; Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 C.P.D. ¶ 330. Nonetheless, we have permitted late bids delivered by commercial couriers to be considered where it was shown that some wrongful action by the government was the paramount cause for late delivery of the bid. See Scot, Inc., 57 Comp. Gen. 119 (1977), 77-2 C.P.D. ¶ 425; Zagata Fabricators, Inc., B-218094, May 1, 1985, 85-1 C.P.D. ¶ 490. In the present situation, we do not find wrongful action by the government to have been the paramount cause for the late delivery of Gem's bid.

We first note that this case is clearly distinguishable from Scot, Inc., 57 Comp. Gen. 119, *supra*. There, the commercial courier attempted to deliver to the bid opening room the properly addressed package containing the bid and was prevented from doing so by government personnel. Here, the commercial courier made no attempt to deliver the package anywhere other than to the central receiving facility. In fact, Gem has provided a statement from the courier to the effect that the courier never delivers packages at the Naval Research Laboratory to an address other than the central receiving office.

Concerning the length of time (3-1/2 hours) taken by the Navy to transfer Gem's bid from the central receiving office

to the bid opening room, Gem has provided no evidence, other than its conclusory statement to that effect, that the amount of time taken was excessive or the result of improper government action. Our Office has held that a similar lapse of 3-1/2 hours for a similar internal mail transfer does not, in and of itself, constitute improper agency action. See Queen City, Inc., B-223515, supra.

Accordingly, under the circumstances presented, we cannot conclude that Gem's bid was received late primarily as a result of wrongful government action. The protest is dismissed in part and denied in part.

for *Seymour Spas*
Harry R. Van Cleve
General Counsel