



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bullard and Danbury Auto Processing

File: B-226841.4

Date: September 3, 1987

DIGEST

Contracting agency properly rejected a late proposal where the offeror's agent was the paramount cause of late delivery by delivering the proposal to the wrong office even though employees in the office to which the proposal was delivered did not redirect the agent to the office on the address label and did not forward the envelope, which was not marked as a proposal, until the next business day.

DECISION

Bullard and Danbury Auto Processing (B&D) protests the rejection of its offer as late under request for proposals (RFP) No. DAHC21-86-R-0021, issued by the Military Traffic Management Command (MTMC), Department of the Army, for the processing of privately-owned vehicles at the South Atlantic Outport, Charleston, South Carolina.

The protest is denied.

The time and date for receipt of offers was 4 p.m., May 29, 1987. The solicitation stated that mailed offers were to be addressed to the Acquisition Division, Building 42, 7th Floor, Military Ocean Terminal, Bayonne, New Jersey, 07002-5302, while hand-carried offers would be received in the depository located in Building 42, Room 705A. On May 29, the day of closing, B&D's offer, which was addressed to the Acquisition Division's address for mailed offers, was delivered by Federal Express courier to the Disbursing Branch in Room 714 of Building 42, at 9:43 a.m. The offer remained there unopened until delivery by an employee of the Disbursing Division to the proposal depository on the next business day, Monday, June 1 at 2:41 p.m.

The contracting officer determined that the offer was late and on June 8, 1987, notice of this determination was sent to B&D. B&D protested to the Army, its protest was denied and then B&D protested to this Office.

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Initially, the Army argues that B&D did not provide the contracting officer with a copy of its protest within 1 day of filing with the General Accounting Office, as is required by our Bid Protest Regulations, (4 C.F.R. § 21.1(d) (1987)) and that the protest therefore should be dismissed.

The regulation stems from the requirement imposed on the procuring activity by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(b)(2)(a) (Supp. III 1985), to furnish our Office with a report on a protest within 25 working days. While we may dismiss protests where the procuring agency has been prejudiced by the protester's noncompliance with this procedural requirement, 4 C.F.R. § 21.1(f), we do not do so automatically. Rather, we consider whether the agency otherwise had knowledge of the basis for the protest and was able to submit its report on the protest within the CICA time limit. Fisherman's Boat Shop, Inc., B-223366, Oct. 3, 1986, 86-2 C.P.D. ¶ 389.

B&D's earlier protest to the Army on the single issue of the rejection of its late proposal is the same as its protest to this Office. Therefore, the Army was aware of the basis for the protest at the time the protest was filed with our Office. In addition, the Army's report, not due until August 10, was filed in this Office on July 29. Under the circumstances, dismissal of the protest would not be warranted. Fisherman's Boat Shop, Inc., B-223366, supra.

B&D states that its offer was timely delivered to Building 42, 7th floor where it was received at 9:43 a.m. B&D's offer was addressed to the Acquisition Division's address for mailed offers, but was delivered to the Disbursement Division's office on the same floor. B&D contends that the reason the offer was subsequently received late in the Acquisition Division is due to government mishandling. The government mishandling occurred, B&D alleges, when the Disbursement Division failed to either forward B&D's offer to the correct office in time for opening or alternatively when it accepted the offer and failed to direct the Federal Express courier to the correct office so that the offer would have been received in time for the closing.

B&D points to the Army's legal opinion in its report on the protest which stated in part:

". . . given the facts before us, there is some evidence of negligence by the government employees who signed for the offers from Federal Express and then failed to deliver them to their proper address until the afternoon of the next working day."

B&D finds support for its argument in Scot, Inc., 57 Comp. Gen. 119 (1977), 77-2 C.P.D. ¶ 425, in which we held that where a government employee misdirected a Federal Express courier to the wrong room when the courier had tried to deliver the bid to the correct room and the bid was subsequently late, the bid could be considered because of the government mishandling.

As a general rule, an offeror has the responsibility of assuring the timely arrival of its proposal at the place designated in the solicitation. However, a hand-carried offer that is received late may be accepted where improper government action was the paramount cause for late delivery and the integrity of the procurement process would not be compromised by acceptance of the offer. Improper government action may be misdirection caused by a government employee; therefore, a misdirected late proposal may be considered so long as the offeror did not significantly contribute to the lateness. St. Charles Travel, B-226567, June 5, 1987, 87-1 C.P.D. ¶ 575. In the latter case we held that even where a security guard at an Air Force base may have contributed to the late delivery of an offer by giving unclear or incorrect directions, the late proposal was properly rejected where the offeror failed to leave enough time to obtain correct directions to the procurement building and was therefore the paramount cause of the late delivery. In that decision we noted that the security guard was neither aware of the procurement nor was he in any capacity directly connected to the base procurement division.

In B&D's case, no Army employee misdirected B&D's agent, Federal Express. Federal Express simply delivered B&D's offer to the wrong address. We note in this connection that the address on the Federal Express envelope was not the correct one for hand-carried offers. In any event, we do not think the Disbursing Division's employees had a greater duty to B&D to refuse the misdelivered mail and to redirect the courier than did B&D's own agent have to find the office clearly stated on the address label. Whether or not the Army's legal counsel may have thought the employees in the Disbursing Division should have been more attentive to misdirected mail is not dispositive of the case. The point remains that B&D's agent improperly delivered its offer and B&D has cited no decisions of this Office holding that the failure to redirect a misdelivered offer is tantamount to government mishandling such as to allow acceptance of the late bid. See Queen City, Inc., B-223515, Sept. 23, 1986, 86-2 C.P.D. ¶ 337. While the Disbursing Division's failure to forward the proposal contributed to its lateness, this factor was incidental rather than the paramount cause of B&D's offer being late. See Imperial Maintenance, B-218614, July 26, 1985, 85-2 C.P.D. ¶ 94.

Moreover, there is no showing that the employees in the Disbursing Division knew of the solicitation or had any procurement function. While the envelope in which B&D's offer was contained was marked with the time and date of the closing, this envelope was enclosed within the Federal Express envelope so the Disbursing Division employees were not on notice of the envelope's contents. Therefore, we find that B&D, through its agent, was the paramount cause for the misdelivered mail.

The protest is denied.

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