



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dakota Woodworks
File: B-233178
Date: January 12, 1989

DIGEST

A bid that was delivered late by Federal Express properly was rejected where the late delivery was caused by Federal Express and not by improper government action.

DECISION

Dakota Woodworks, the low bidder, protests the rejection of its bid as late under invitation for bids (IFB) No. OAM-88-A-0006, issued by the U.S. General Accounting Office (GAO) for the millwork construction of 28 office settings, an executive conference room and a reception hall area. The required millwork, including the construction of work-surfaces, a conference room wall, book shelves, file cabinets, computer keyboard trays and built-in wall units, will be installed at the GAO Regional Office in Los Angeles, California. Dakota contends that GAO caused the late delivery of its bid by providing an incorrect zip code to its firm.

We deny the protest.

The IFB required the submission of bids by 3 p.m., Eastern Standard Time, on September 28, 1988. The solicitation provided different addresses for hand-carried and mailed bids. No zip code was provided for the hand-carried address. The IFB advised that sealed envelopes containing bids must be marked to show the bidder's name and address, the solicitation number and the date and time of bid opening. With respect to hand-carried bids, the IFB advised that adequate time should be allowed to enable the person making the delivery to obtain whatever clearances are required to enter the building to which bids were to be delivered.

044338/137705

Three bids were received in response to the solicitation. The protester's bid, sent by Federal Express, a commercial carrier, arrived 26 minutes late and was rejected as a late bid.

The protester contends that the bid was late because the GAO contract specialist had improperly instructed the firm's secretary to address the bid package using the zip code of the location for mailed bids rather than the zip code for the building to which hand-carried bids were to be delivered, which was not in the solicitation. Dakota states that it has verified that the bid arrived at Federal Express' Washington, D.C. facility at 7:30 a.m. on September 28, well before the 3 p.m. bid opening time, and contends that if the government had not misdirected it by providing the incorrect zip code, Federal Express would have been able to deliver its bid on time.

In response, GAO states that Dakota did not at any time request the zip code of the bid opening room building, nor was any zip code ever provided to the protester. GAO also states that the IFB's address for hand-carried bids did not include a zip code because a zip code is only required if the U.S. Postal Service is involved in the delivery and is not necessary for hand-carried mail which is not handled by the Postal Service. GAO further notes that if the protester is correct that Federal Express used the zip code in this case to help locate the building, GAO's failure to anticipate this unique procedure and include a zip code for the hand-carried address in the solicitation does not constitute improper government action. Finally, GAO states that the protester has not explained why Federal Express took approximately 8 hours (from 7:30 a.m. till 3:26 p.m.) to deliver the bid package to the correct address. GAO maintains that the late delivery was caused by the protester's failure to properly prepare its bid envelope and allow sufficient time for the timely delivery of its bid, making due allowances for contingencies such as those which occurred here.

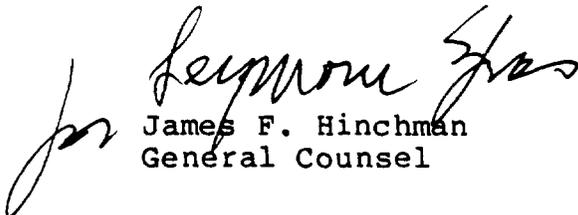
As a general rule, a bidder is responsible for delivering its bid to the proper place at the proper time. Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 CPD ¶ 330. Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as a hand-carried bid. A late hand-carried bid may be considered where the protester can show that the government's action was the paramount cause of the bid's late arrival at the designated place. Motorola Inc., B-219592, July 24, 1985, 85-2 CPD ¶ 84.

The record indicates that the protester sent its bid from Grand Forks, North Dakota, utilizing Federal Express' overnight delivery service, on September 27, the day before bid opening. In addressing the Federal Express envelope, the protester included the zip code for the building to which bids were to be mailed, rather than the zip code for the building to which hand-carried bids were to be delivered. The protester did not include the solicitation number on the envelope as required by the IFB, but the envelope indicated that a sealed bid was enclosed and, in compliance with the solicitation requirement, was marked to show the time and date of bid opening. The envelope designated the GAO contract specialist as the recipient of the bid and included his telephone number. The envelope was marked "extremely urgent" and even included the IFB provision advising that adequate time should be allowed for clearances that may be required for entry into the building where the bid had to be delivered. The protester specifically wrote in large letters, "Federal Express Carriers, Please Note ABOVE" and drew an arrow pointing to the IFB provision on the envelope.

Notwithstanding all of these warnings that were clearly written on the Federal Express envelope and the 7-1/2 hours that Federal Express had to deliver the bid, the carrier failed to timely deliver the bid. Even though the zip code was not correct, if Federal Express was not able to find the building within the erroneous zip code, the carrier had ample time and could easily have ascertained the correct location of that address by checking a map. In this regard, the record indicates that the awardee's bid, mailed from California on September 27, was delivered by Federal Express to the correct location despite the fact that the address on the envelope had the wrong street number. Further, the record indicates that the contract specialist called the protester on September 27, to remind Dakota that bids were due on September 28. Upon being informed by the protester that the bid would be sent by Federal Express which guaranteed timely delivery, the contract specialist informed Dakota that Federal Express had recently been experiencing difficulty in delivering some bids to GAO on time.

Under the circumstances, since the record indicates that the delay in delivery was caused by Federal Express, and not the government, we conclude that GAO properly rejected Dakota's bid as late. See Rodale Electronics Corp., B-221727, Apr. 7, 1986, 86-1 CPD ¶ 342.

The protest is denied.


James F. Hinchman
General Counsel