



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inland Marine Industries, Inc.

File: B-233117

Date: February 16, 1989

DIGEST

1. Where there is no evidence that commercial carrier attempted to deliver protester's bid to office designated in invitation for bids but was directed to the mailroom instead, we do not find that government impropriety was the paramount cause of its late receipt.

2. Bidder's failure to acknowledge amendment that had no material impact on some line items in solicitation which provided for multiple awards did not render its low bid nonresponsive for those items and therefore rejection of that portion of the bid was improper.

DECISION

Inland Marine Industries, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DTTCG40-88-B-30024, issued by the Coast Guard. Inland Marine contends that the Coast Guard improperly rejected its bid because of its allegedly late acknowledgment of a solicitation amendment. In the alternative, the protester argues that it should receive the award under that portion of the solicitation which was not affected by the amendment.

While we agree with the agency that the protester's acknowledgment of the amendment was late, we conclude that the protester was entitled to that portion of the award upon which the amendment had no impact. We therefore deny the protest in part and sustain it in part.

The solicitation, which was issued on April 13, 1988, was for 125 line items of miscellaneous marine furniture. The line items were segregated into groups I through VIII. The IFB contemplated the award of one or more contracts to the lowest bidder for each group. The solicitation contained a \$250 evaluation factor for use in determining whether

044652/137972

multiple awards were justified. The solicitation as originally issued called for bid opening on May 13, and was amended four times. Amendment No. 0001 extended bid opening to May 31. Amendment No. 0002 provided answers to bidders' questions and further extended bid opening to June 7. Amendment No. 0003 extended bid opening to June 30. Amendment No. 0004 provided answers to bidders' questions and finally set bid opening for 10:00 a.m. on July 29. Amendment No. 0004 also made various changes in quantity to some of the contract line items in groups II, V, VI, and VII, while adding a line item to group VII.

On June 6, before the Coast Guard issued amendment Nos. 0003 and 0004, Inland Marine submitted its bid on each of the eight groups. At bid opening, Inland Marine was the apparent low bidder on groups II, IV and V. The Coast Guard, however, found Inland Marine's bid nonresponsive because of its failure to timely acknowledge amendment No. 0004.^{1/} Contracts for groups II, III, IV, V, and VIII were subsequently awarded to Jamestown Metal Marine.

The IFB advised bidders that all bids, both mailed and hand-carried, would be received and opened at the Procurement Department, Coast Guard Yard, Curtis Bay, Baltimore, Maryland. Amendment No. 0004, which extended bid opening to July 29, made no change in the place for receipt of bids. Inland Marine's acknowledgment of amendment No. 0004 was delivered by Federal Express to the Coast Guard's mailroom on July 29 around 9:30 a.m. The acknowledgment, however, was not received in the bid opening room until 10:56 a.m. and was therefore considered late.

Inland Marine argues that its acknowledgment of amendment No. 0004 was timely because it was received by the Coast Guard's mailroom prior to bid opening. The protester contends that, for purposes of this procurement, the mailroom was in fact the depository for bids since the IFB only listed the mailing address with no specific building or room number for the Procurement Department. According to Inland Marine, its bid was late due to the contracting agency's failure to provide an adequate description for the hand-delivery of bids, the agency's apparent failure to allow the Federal Express driver to deliver the package to the named addressee as opposed to the mailroom and, lastly, due to the mailroom's failure to respond to an inquiry from

^{1/} Inland Marine also failed to acknowledge amendment No. 0003, but since that amendment merely extended the bid opening time its failure to acknowledge was properly waived.

the bid opening room as to whether any bids or amendments had been received.

The Coast Guard responds that it correctly followed its normal procedures in processing the protester's amendment. According to these procedures commercial carriers are directed to deliver their packages to the Yard mailroom unless the carrier requests to deliver the package to a specific individual. The agency points out that there is nothing in the record indicating that such a request was made. Instead, the package was received in the mailroom and delivered to the Procurement Department, which is the last stop on the normal mail run. This process took about 1-1/2 hours. Further, the Coast Guard states that in accordance with standard procedure the contracting specialist phoned the mailroom shortly prior to bid opening to see if there were any bids there. Since the mail run had apparently already started the mailroom personnel indicated that they had no packages relevant to the solicitation.

Bidders are responsible for the timely delivery of their bids and material amendments, and the late delivery of them generally requires the bid's rejection. MAPA Pioneer Corp., B-231517, Sept. 13, 1988, 88-2 CPD ¶ 232. A late bid or acknowledgment of a material amendment sent by commercial carrier can only be considered if the paramount cause of the late receipt was some improper government action. Id. Moreover, a bid is late if it does not arrive at the office designated in the solicitation by the time specified. See G.M. Coen & Assocs., Inc., B-225554, Feb. 12, 1987, 87-1 CPD ¶ 156.

First, contrary to the protester's position, receipt in the agency's mailroom prior to the time set for bid opening does not constitute timely receipt. The bid must be received in the place designated in the IFB, which in this case was the Procurement Department. See G.M. Coen & Assocs., Inc., B-225554, supra. Further, the record does not show that government impropriety was the paramount cause for the lateness of Inland Marine's acknowledgment. Although Inland Marine contends that the contracting agency's failure to indicate a specific building or room number in the IFB contributed to the late receipt, that could not have been a problem since the protester did in fact include the building number for the Procurement Department on its Federal Express airbill. Secondly, the protester provides no evidence that the carrier requested to make a delivery to the named addressee and was prevented from doing so. Also, Inland Marine has not shown and the record does not indicate that the time that elapsed between the delivery by the carrier

the mailroom and the delivery to the designated office (ca. 1-1/2 hours) was excessive. See Queen City Inc., B-223515, Sept. 23, 1986, 86-2-CPD ¶ 337. To the contrary, it appears that normal delivery procedures were followed and that these procedures were reasonable. Under these circumstances, we have no basis for concluding that the amendment acknowledgment was late because of wrongful government action.

While we agree with the Coast Guard that Inland Marine's acknowledgment of amendment No. 0004 was late, we do not agree that that failure to timely acknowledge the amendment should have resulted in the rejection of the protester's bid for group IV.

Both parties agree that Inland Marine's bid was low on group IV and that amendment No. 0004 had no effect at all on the line items making up group IV. Since the solicitation clearly provided for multiple awards to the low bidders under each group and since amendment No. 0004 did not impact on group IV, we see no reason why the protester as the low bidder on that group should not have received the award.

While a bidder's failure to acknowledge a material amendment by bid opening generally renders the bid nonresponsive, an amendment is material only if it would have more than a trivial impact on the price, quantity, quality, delivery or the relative standing of the bidders. Federal Acquisition Regulation § 14.405. An amendment is not material and a bidder's failure to acknowledge it may be waived where the amendment does not impose any legal obligations on the bidder different from those imposed by the solicitation as it existed prior to the time the particular amendment was issued. See Adak Communications Systems, Inc., B-228341, Jan. 26, 1988, 88-1 CPD ¶ 74. Since the amendment did not have any impact on group IV, it should have been waived as to that group.

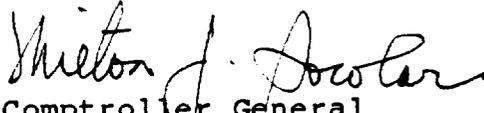
The agency's objection to awarding this group to the protester seems to be based on a concern that since the amendment was material as to certain portions of the solicitation the entire bid must be rejected. We disagree. Where, as here, the solicitation provides for multiple awards by groups of line items and there is nothing that ties the changes made by the amendment in the line item quantities in the other groups to the group under which the bidder is low, we see no reason to prohibit the award of that group to that bidder. In this regard, where multiple awards are not prohibited by a sealed bid solicitation, such awards are to be made if, as here, it results in the

lowest cost. Connie Hall Co., B-223440, July 9, 1986, 86-2 CPD ¶ 52. Finally, the agency maintains that award of this group to Inland Marine would prejudice other firms who submitted their bids on time. We fail to see how the other bidders would be prejudiced as the protester's bid itself was timely and the only portion of its bid to be accepted was unaffected by the late amendment acknowledgment.

Consequently, we recommend that the contract awarded to Jamestown Metal Marine for group IV be terminated and awarded to Inland Marine, if otherwise appropriate.

Further, we find that Inland Marine is entitled to the costs of filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(c)(1) (1988).

The protest is denied in part and sustained in part.

for 
Comptroller General
of the United States