



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Weather Data Services, Inc.

**File:** B-238970

**Date:** June 22, 1990

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Jeffrey A. Short, Weather Data Services, Inc., for the protester.  
Neil D. Friedman, Esq., Department of Commerce, for the agency.  
George Ruppert, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Government mishandling was not the sole or paramount reason for late receipt of a bid which was hand-delivered by commercial carrier to the agency mail room on the morning of the 3 p.m. bid opening date where it does not appear that the outer, Federal Express envelope was marked with any information identifying it as containing a bid and, as a result, the bid was delivered to the bid depository after bid opening by the agency's regular internal mail delivery, rather than by expedited mail delivery; accordingly, the bid was properly rejected as late.

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### DECISION

Weather Data Services, Inc., protests the Department of Commerce's rejection of its bid as late under invitation for bids (IFB) No. 51RANW000053, for the collection, documentation, and dissemination of aviation weather observations at the Nashville International Airport, Nashville, Tennessee. The bid was rejected because it was not received at the bid opening location until the morning after the scheduled bid opening.

We deny the protest.

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The solicitation required that all bids, hand-carried or otherwise, be received at the specified bid depository by 3 p.m., March 14, 1990. The IFB incorporated by reference the standard "Submission of Bids" clause, which provides that: "Bids and bid modifications shall be submitted in sealed envelopes or packages . . . showing the time specified for receipt, the solicitation number, and the name and address of the bidder." Federal Acquisition Regulation (FAR) § 52.214-5. In addition, the solicitation package included optional form (OF) 17, which indicates: **"IMPORTANT--NOTICE TO BIDDER.** On the envelope submitting your bids, it is imperative . . . that the bottom portion of the label be filled in and pasted on the LOWER left corner." The lower half of the label is prominently marked "Sealed Bid" and has spaces for the bidder to list information required by FAR § 52.214-5 about bid opening.

At the time of bid opening, the agency had received 11 bids at the specified location, but Weather Data's bid was not among these. Weather Data had sent its bid by Federal Express on March 13, addressed to the bid depository for next day delivery. Personnel at the agency's contractor-run mail room noted receipt on March 14 of Weather Data's Federal Express package by annotating the manifest after an earlier delivery entry, made at 8:20 a.m. on March 14 by Airborne Express. Although the mail room did not specifically note when the later Federal Express delivery was made, the protester has furnished a Federal Express receipt for the package, signed by a mail room employee, which indicates delivery was made at 10:12 a.m., March 14; the mail room employee recollects that delivery was made about 10:30 a.m. on March 14.

According to the agency, however, the Federal Express mailing envelope containing the protester's bid, which subsequently was discarded, was not marked with the "Sealed Bid" label or a similar notice. The agency states that since there was nothing on the Federal Express envelope indicating that it contained bid documents, mail room personnel used standard distribution procedures, which included making a photocopy of the address label and sorting the envelope for routine delivery, along with other routine mail, on the next regularly scheduled mail delivery run, which would not be until early afternoon that day. Although the mail room contractor routed the protester's bid to the correct agency unit, it mistakenly sent the bid to the incorrect subunit, the Finance Division, rather than to the Procurement Division. A finance clerk opened the protester's Federal Express envelope and discarded it; inside, there was an envelope bearing the OF-17 "Sealed Bid" label and clearly marked for the Procurement Division.

The agency reports that the finance clerk then deposited the bid envelope in the outgoing mail for routine delivery to the Procurement Division. The mail room contractor picked up the bid envelope during the course of the next regular mail run, which was on the following morning, March 15. The envelope was hand-delivered to the contracting office, where it was immediately stamped as received at 9:40 a.m. The contracting office then rejected the bid as late.

Weather Data contends that the paramount cause of the late receipt of its bid at the contracting office was mishandling by the agency. Specifically, the protester argues that the finance clerk who opened the Federal Express package should have noticed that it was addressed to the Procurement Division, realized the importance of the "Sealed Bid" label affixed to the envelope, and therefore arranged for immediate delivery to the Procurement Division, rather than simply placing it in the outgoing mail box for the next routine pickup.

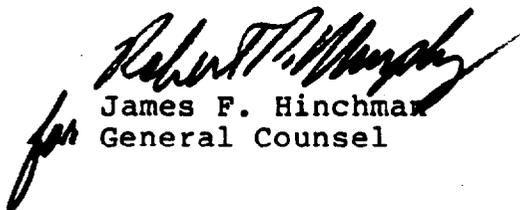
As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. International Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146. A late bid, hand-carried by a commercial carrier, can be considered for award if government mishandling after timely receipt at the agency was the sole or paramount cause for late receipt in the bid opening room. Hans Olsen Egg Co., Inc., B-235085, July 24, 1989, 89-2 CPD ¶ 75; see IPS Group, B-235988, Oct. 6, 1989, 89-2 CPD ¶ 327 (timely receipt may be shown by a preponderance of all relevant evidence, including statements of the protester's representatives and government personnel). A late bid may not be considered where late receipt results from the failure of a bidder to reasonably fulfill its responsibility for insuring timely delivery to the designated location. Hans Olsen Egg Co., Inc., B-235085, supra.

Here, Weather Data has not submitted any evidence that, as instructed in the IFB, it indicated on the outer, Federal Express envelope that the package contained a bid. Building Maintenance Specialists, Inc., B-215019, June 28, 1984, 84-1 CPD ¶ 690. Although in its comments on the agency report Weather Data states generally that it "never sent a bid without [the] sealed bid label affixed to the envelope that contained the bid," the protester has not stated that a sealed bid label was affixed to the outer, Federal Express envelope, as opposed to the inner bid envelope, in this case. Indeed, the evidence indicates that a sealed bid

label most probably was not attached to the Federal Express package. According to Commerce, if the outermost envelope of an item transmitted by an overnight delivery service has a sealed bid label, the routine practice of the agency mail room is to note its receipt in a special journal and make a special, hand-delivery to the contracting office, where the envelope is time-and-date stamped upon receipt and retained, unopened, until the time of bid opening. On the other hand, if the outermost envelope of an item transmitted by an overnight delivery service does not have a sealed bid label, the routine practice of the contracting office is to open and discard the envelope, which is precisely what happened here. The agency reports that this scenario is consistent with its experience with prior bids received from the protester; the sealed bid label was placed only on the inner envelope, not on the outer envelope.

In the absence of the required sealed bid label on the Federal Express envelope, the agency mail room had no reason to treat the envelope as other than regular mail and expedite delivery. We therefore find that the paramount cause for the late receipt of Weather Data's bid at the designated location was the protester's failure to mark the outer envelope as containing a bid as required by the IFB, not government mishandling. As a result, Commerce properly rejected Weather Data's bid as late, since it was not received in the location specified in the solicitation by bid opening. Larry J. Robinson & Co., Inc., B-234991, June 13, 1989, 89-1 CPD ¶ 559.

The protest is denied.

  
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General Counsel