



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Select, Inc.

**File:** B-245820.2

**Date:** January 3, 1992

David D. Stewart for the protester.  
Alexander J. Brittin, Esq., McKenna & Cuneo, for Tek Contracting, Inc., an interested party.  
John R. McCaw, Esq., and Dwight Williams, Esq., Department of Transportation, for the agency.  
Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where solicitation incorrectly indicated wrong city for delivery of hand-carried bids, government action was the paramount cause of a hand-carried bid's late delivery; since record demonstrates that bidder relinquished control over its bid prior to bid opening, consideration of late bid would not compromise the integrity of the competitive procurement system, and agency's acceptance of late bid was therefore proper.

## DECISION

Select, Inc. protests the award of a contract to Tek Contracting, Inc., under invitation for bids (IFB) No. DTFAl1-91-B-00194, issued by the Federal Aviation Administration (FAA), Department of Transportation (DOT), for the construction of various fire protection improvements at the Hillsboro Air Traffic Control Tower, Hillsboro, Oregon. Select protests that because the Tek bid was not received until after the time set for bid opening, FAA was required to exclude the bid from consideration for award.

We dismiss the protest because it fails to state a valid basis for protest. See 4 C.F.R. § 21.3(m) (1991).

The IFB was issued on August 19, 1991, under the Small Business Competitiveness Demonstration Program,<sup>1</sup> and specified

<sup>1</sup>The Small Business Competitiveness Demonstration Program Act, 15 U.S.C. § 644 (1988), as implemented by Federal Acquisition Regulation (FAR) § 19.1001, establishes a demonstration program under which solicitations for the

that bids were to be submitted by 11:00 a.m. on September 18. The solicitation also incorporated by reference FAR § 52.214-7, "Late Submissions, Modifications, and Withdrawals of Bids," which provides that a bid received prior to award but after the specified bid opening time and date will not be considered unless: (1) the bid was sent by registered or certified mail within 5 calendar days prior to the scheduled bid opening; (2) the bid--only if sent by mail, telegraph or facsimile--was late solely due to government mishandling after timely receipt at the government installation; or (3) the bid was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee within 2 working days prior to the scheduled bid opening date.

At the bid opening on September 18, two bids were received from Select and Pacific Coast Construction. Although Pacific Coast was the apparent low bidder, because it failed to acknowledge amendment No. 0001--issued by FAA on September 3 to incorporate new Department of Labor (DOL) wage rate determinations--its bid was determined nonresponsive.

Shortly after the time set for bid opening, FAA contracting office received a telephone inquiry from Tek about the bid opening results. Tek stated that it had submitted a bid for the procurement by overnight mail via the United Parcel Service (UPS); Tek informed the contracting office staff member that it had sent the bid to the hand-carried bid address specified in section L of the solicitation.

The solicitation set forth two separate addresses--one for bids submitted by mail and one for bids which were hand-carried by commercial carriers. After Tek's inquiry, the FAA contracting office staff member reviewed section L of the solicitation and discovered a mistaken delivery address for hand-carried bids. Although the hand-carried bid instructions set forth the proper floor, room and street address as well as the proper zip code, instead of indicating the city of Renton, section L specified that all hand-carried bids were to be delivered to the city of Seattle.

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procurement of services in designated industry groups are to be issued on an unrestricted basis, provided the agency has attained its small business participation goals. The purpose of the program is to test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. See FAR § 19.1003(a).

The agency staff member then informed the supervisory contracting officer of the address error. Later that same day, at 3:06 p.m., September 18, FAA contracting office received Tek's bid. The UPS invoice established that Tek had delivered its bid to UPS on September 17, 1991; the invoice also indicated that UPS had guaranteed delivery of the bid to FAA by 10:30 a.m. on September 18. The supervisory contracting officer found that UPS routinely makes its morning delivery to the Renton facility between 8:30 and 10:00 a.m. On September 18, the UPS delivery arrived at the Renton office at 9:31 a.m. In light of the error in the solicitation's hand-carried bid address as well as the UPS tracer establishing that Tek had clearly relinquished control over its bid on September 17, the supervisory contracting officer determined that Tek's bid would have been timely received by FAA if the hand-carried bid instructions had properly set forth the city of Renton rather than Seattle. Accordingly, the supervisory contracting officer decided to accept Tek's bid.

On September 24, Select learned that FAA intended to make award to Tek as the low bidder; Select subsequently protested this decision to our Office on September 27. In its protest, Select maintains that Tek's bid cannot be considered by the agency since the three late bid exceptions set forth at FAR § 52.214-7 do not apply to hand-carried bids.

Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as hand-carried.<sup>2</sup> As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time; however, a late bid, hand-carried by a commercial carrier, can be considered for award if government error is the sole or paramount cause for its late receipt in the bid opening room. See Richards Painting Co., B-232678, Jan. 25, 1989, 89-1 CPD ¶ 76; Olympia USA Inc., B-215149, May 21, 1984, 84-1 CPD ¶ 535. In this regard, we have held that a strict and literal application of the late bid clause should not be used to reject a bid where to do so would contravene the intent and spirit of full competition. See 48 Comp. Gen. 508 (1963); Saint Louis Tuckpointing and Painting Co., Inc., B-212351.2, Nov. 18, 1983, 83-2 CPD ¶ 588; Howard Mgmt. Group, B-221889, July 3, 1986, 86-2 CPD ¶ 28.

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<sup>2</sup>Section L of the IFB clearly defined bids carried by "Commercial Carrier, e.g. Federal Express, United Parcel Service, Air Borne Express" as "[h]and [c]arried" and "[h]and [d]elivered" bids.

Here, the record clearly shows that the protester sent its bid, via UPS overnight delivery service, on September 17. In addressing the UPS envelope, Tek included the exact Seattle address as set forth in the section L "Hand Delivered" bid address provision. The fact that the bid envelope was mislabeled with the wrong city was not due to any error on Tek's part; rather, the bid's late delivery resulted solely from the government's improper delivery instructions. Under these circumstances, we find that the government's affirmative misdirection made timely delivery of Tek's bid impossible. See United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146.

In its comments on the agency report, Select contends that despite FAA's address error, Tek was the significant cause of its bid's late receipt. Specifically, Select argues that Tek should have noted the discrepancy in the two addresses--which except for the designated city and the inclusion of the floor and room number for hand-carried bids--are identical, and accordingly recognized that one of the addresses was wrong. In this regard, Select also argues that acceptance of Tek's late bid gives the awardee an unfair competitive advantage over other bidders. We disagree.

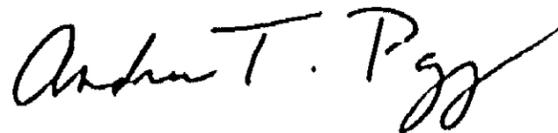
The government has a duty to establish procedures for the timely receipt of bids. Saint Louis Tuckpointing & Painting Co., supra. Accordingly, where, as here, affirmative government misdirection--such as erroneous solicitation instructions--clearly delay a bid's timely submission, the bid should not be rejected unless the bidder has significantly contributed to the government's late receipt by not acting reasonably in fulfilling its responsibility of delivering a hand-carried bid to the proper place by the proper time. Monthei Mechanical, Inc., B-216624, Dec. 17, 1984, 84-2 CPD ¶ 675.

In this case, Tek asserts that although it noticed the two address provisions listed different cities, it merely concluded that the bid opening and mail collection were being conducted by separate FAA offices. We find this explanation plausible given the fact that an agency's bid opening and mail processing often occur at different sites. In our view, the address discrepancy was not sufficiently clear to place Tek on notice that the hand-carried bid address upon which it was relying was incorrect; contrary to Select's argument, we do not find that Tek unreasonably failed to detect the agency's mistake. See Dale Woods, B-209459, Apr. 13, 1983, 83-1 CPD ¶ 396.

Nor do we find that acceptance of Tek's bid compromised the integrity of this procurement. The record shows that Tek submitted its bid for delivery before the time for bid

opening and thus relinquished control over its bid; moreover, in a sworn affidavit, Tek has informed this Office that after surrendering its bid for delivery by UPS, it never saw, modified or otherwise handled the bid. Since Tek's bid was clearly entered into the UPS processing system in sufficient time to have it reach the Renton facility had that city been properly designated on the address label, and since the Tek bid was in the possession of UPS prior to the time Tek knew of the hand-delivered bid address error in the solicitation, we find that no unfair competitive advantage inured to Tek when FAA accepted its bid. See Howard Mgmt. Group, supra.

The protest is dismissed.



Andrew T. Pogany  
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