

Matter of: PLAN-Industriefahrzeug GmbH & Co. KG

File: B-254517

Date: December 23, 1993

G.H. Rebmann for the protester.
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Department of the Army, for the agency.
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General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. Protest is sustained where, due to administrative oversight, agency failed to follow its established procedures for receipt of registered mail, and this mishandling during the process of receipt improperly precluded consideration of protester's bid.
2. Where, as a result of agency's mishandling in receipt, bid was returned to protester and not considered for award, General Accounting Office recommends that bid be resubmitted to agency and that the agency make a determination whether or not the bid envelope has been opened or tampered with, if it has not, the bid should be considered for award.

DECISION

PLAN-Industriefahrzeug GmbH & Co. KG (PLAN) protests the Department of the Army's rejection of its bid as late under invitation for bids (IFB) No. DAJA37-93-B-0039, for a heavy duty yard tractor.

We sustain the protest.

The solicitation was issued on June 21, 1993, with a bid opening date of July 19. Although PLAN had submitted its bid, postmarked July 9, by registered German mail properly addressed to the location stated in the IFB, only one bid, submitted by MV Maschinen-vertriebsgesellschaft mbH was received by the bid opening date.

On July 22, PLAN received from the German Post Office its unopened bid. The envelope containing its bid bore the following two official mail stamps of the German Post Office (translated from German): "Delivery not possible during normal business hours. Left notice-of-arrival slip. (12.07.93)," and "Not picked up. Holding period expired. Return. (20.07.93)."

On the same day, PLAN contacted the Army to find out why its bid had been returned unopened. Upon investigation, the contracting officer discovered that the German Post Office attempted to deliver PLAN's bid during normal business hours on July 12 at the reception area of the Contracting Center Support Division (CCSD) (the office that receives and processes all incoming U.S. and German Post Office mail for the contracting activity), but that no one was present to accept PLAN's bid. The postal employee thus left a notice-of-arrival slip indicating that the German Post Office attempted delivery of registered mail on that date and requested that it be picked up at the German Post Office within 7 working days. While under CCSD's established procedures a mail clerk is sent to the German Post Office 1 working day after receipt of a notice-of-arrival slip, due to an administrative oversight the notice slip was never given to the mail clerk; as a result, PLAN's bid was never picked up. Upon expiration of the 7-day holding period, the bid was returned to PLAN unopened.

Based on this explanation by the contracting officer of the events surrounding PLAN's bid, the firm requested by letter of July 22 to the contracting officer that he either accept PLAN's bid as timely received or, alternatively, accept its bid as a late bid. By letter dated August 3, the Army denied this request, stating that PLAN's bid could not be considered since it could have been altered after being returned to PLAN from the German Post Office. Award has been delayed pending our decision here.

PLAN maintains that its bid would have been the low bid received, was sent in time to be considered, and was not considered for award due to mishandling by the Army. PLAN states that it has not opened or tampered with the bid, and requests that the Army now consider the bid for award.

Where it is shown that a bid was not received prior to bid opening due primarily to the agency's failure to establish or adhere to reasonable procedures for receiving bids, the agency's actions constitute mishandling during the receipt

of the bid and may warrant considering the bid. See Veterans Admin.--Request for Advance Decision, B-212800, Oct. 25, 1983, 83-2 CPD ¶ 498; Sun Int'l, B-208146, Jan. 24, 1983, 83-1 CPD ¶ 78.

It is clear that the Army mishandled PLAN's bid during receipt and that this mishandling was the sole reason why the bid was not received prior to bid opening. In this regard, the agency itself concedes that procedures for receiving bids sent by registered mail were in place but were not followed; there was no one available to receive PLAN's bid when delivery was attempted, and the agency failed to send the clerk to the post office to pick up the bid, despite the notice left at the time of the attempted delivery. Therefore, PLAN's bid would have been received and considered but for the Army's actions.

The agency's refusal to consider PLAN's bid at this juncture rests solely on the proposition that considering a bid after it has been returned to the bidder will harm the integrity of the bidding process and therefore cannot be permitted. An important concern in matters such as this is the preservation of the integrity of the competitive bidding system. Veterans Admin.--Request for Advance Decision, supra. This goal is not compromised by consideration of a returned bid resubmitted after bid opening where it can be established through an examination that the sealed bid envelope has not been opened. See 50 Comp. Gen. 325 (1970); Veterans Admin.--Request for Advance Decision, supra; Metalsco, Inc., B-187882, Mar. 9, 1977, 77-1 CPD ¶ 175. Since award has not been made and PLAN has represented that its bid would be the low bid received, this approach is appropriate in this case.

By letter of today to the Secretary of the Army, we are recommending that PLAN be permitted to promptly resubmit its bid to the Army, and that the Army then have suitable experts analyze the envelope to determine whether or not the envelope has been opened or otherwise tampered with; the envelope itself should be identifiable by the German postal markings discussed above. In the event, the Army determines that the envelope is authentic and has not been opened, the Army should consider PLAN's bid for award. We also find that the protester is entitled to reimbursement of the costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d) (1993). In accordance with 4 C.F.R. § 21.6(f)(1), PLAN's

certified claim for costs, detailing the time expended and the costs incurred, must be submitted to the Army within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States