

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

*Underfunded
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15421

FILE: B-199682

DATE: November 12, 1980

MATTER OF: Lloyd S. Hockema, Inc.

DIGEST:

[Protest of Forest Service Contract Award]

Where commercial carrier delivers bid to Information Office at Government installation rather than room designated in IFB because room number was not on bid envelope, alleged mishandling of bid by Government after receipt is not paramount reason for late receipt and bid cannot be considered.

Lloyd S. Hockema, Inc. (Lloyd), protests the proposed award of a contract under invitation for bids (IFB) No. R6-80-260C for timber sale roads construction by the Forest Service to any bidder other than itself. The Forest Service has expressed its intention to award the contract to the company of Hockema and Hockema, Inc. (Hockema), the apparent low bidder on the contract. Based on our review, we sustain the protest.

The IFB contained the standard "late bids" clause which stipulates that a late bid will be considered before award if: (1) sent by certified or registered mail not later than 5 days before bid opening; or, (2) sent by mail (or telegram if authorized) and it is determined that the late receipt was due solely to mishandling by the procuring installation after receipt. Hand-carried bids under the IFB were to be delivered to room 744 of the "Multnomah Building," 319 S.W. Pine Street, Portland, Oregon, by 2 p.m. on July 7, 1980. Nevertheless, Hockema's handcarried bid was initially delivered to the Forest Service's first floor Information Office rather than the designated room by the bidder's bonding company which had been instructed by Hockema to deliver the bid. The envelope containing Hockema's bid did not contain a room number and was not identified as containing a bid.

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According to a Forest Service Information Office employee, Hockema's bid was received by her at approximately 10:15 a.m. She was asked by the messenger to deliver the envelope but was not told that it was a bid. The employee immediately took the envelope to the mailroom where another employee identified the contents as being solicitation forms but not as being a bid because they were not marked with a form "OF-17" sticker. (This sticker is ordinarily attached by the Forest Service to solicitation forms given to prospective bidders.) The bid was marked to be routed to the contracting section in administrative services, but was not actually taken there until 2:30 p.m. Thus, Hockema's bid was received late at the designated office.

The Forest Service maintains that Hockema's low bid should be considered. The agency report states:

"* * * We find that due to not handling the envelope, which had been stapled shut by the mailroom supervisor after identification, in the routine manner for the internal distribution of mail and other written material that the bid did not arrive in the contracting section until after the time set for bid opening. It has been determined that had the envelope containing the bid been handled in a routine manner there is a high probability the bid would have been opened at the time of bidding. It is our determination that the failure to handle this material in the usual and routine manner is tantamount to mishandling. * * *"

Because of this position and the fact that Hockema's bid was the lowest, the contracting officer concludes that the contract should be awarded to Hockema even though the company did not mail its bid--a prerequisite to considering a late bid under the "mishandling" exception of the late bids clause. Specifically, the contracting officer cites I&E Construction Company, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139, in which the agency prevented timely delivery of a bid; therefore, we concluded it would be contrary to the "intent and spirit of the late bid regulation" not to allow consideration of

the bid even though a "strict and literal application of the regulation" could be utilized to reject the late bid. The contracting officer argues that the facts involved here fit within the rationale of the cited case.

The cited case and several cases involving bids handcarried by commercial carriers--as was the case here--were reviewed and explained in Southern Oregon Aggregate, Inc., B-190159, December 16, 1977, 77-2 CPD 477, as follows:

"The line of decisions developed by our Office in regard to bids handcarried by commercial carrier has generally held that a late bid delivered by a commercial carrier rather than by mail cannot be considered [under the above late bids clause] even though its lateness can be attributed to Government mishandling. * * * On the other hand, we have also stated that a strict and literal application of [the late bids clause] should not be utilized to reject a bid where to do so would contravene the intent and spirit of the late bids [clause and] regulation. See I&E Construction Company, [above] * * *.

"This apparent conflict between the general rule, that within narrow exceptions [under the late bids clause and regulation] the bidder is responsible for the delivery of its bid to the proper place at the proper time, and the other rule, that an overly technical application of the late bid regulations should be avoided, has been partially resolved in a line of decisions which require that any Government mishandling be the 'paramount reason' for the late receipt before a technically late bid will be considered. See Surplus Tire Sales - reconsideration, B-187322, February 28, 1977, 77-1 CPD 145; Surplus Tire Sales, B-187322, December 13, 1976,

76-2 CPD 479; S&Q Corporation, B-186794, November 11, 1976, 76-2 CPD 402; Record Electric Inc., 56 Comp. Gen. 4 (1976), 76-2 CPD 315.

"Therefore, since S.O.A. is responsible for the delivery of its bid to the proper place at the proper time, and having chosen commercial carrier rather than mail, it cannot invoke the Government mishandling exception allowed by [the late bids clause and regulation]. However, its bid may still be considered if the bid was delivered to the wrong place due to Government fault and this fault is the paramount reason for the late receipt."

Under the facts of record, it is clear that the commercial carrier of Hockema's bid did not attempt to deliver the bid to the designated room because the room address was not on the bid envelope. Thus, the Government cannot be faulted for the carrier's failure to deliver the Hockema bid to the "proper place at the proper time." Consequently, Hockema's late bid may not be considered under the above precedent.

Protest sustained.

Harry R. Van Cleave

For the Comptroller General
of the United States