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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest Against Agency Refusal to Accept Bid Modification]

FILE: B-199141

DATE: December 16, 1980

MATTER OF: SRM Manufacturing Company

DIGEST:

1. Navy procuring activity has instituted reasonable measures for receipt and processing of urgent telegraphic messages--including bids--given daily volume of messages at message processing facilities. Based on review of record, protester--not Navy--was responsible for failure of bid modification to be received and transmitted through primary or alternate means designated for processing of urgent messages.
2. Since protester was responsible for procuring activity's transmission of telegraphic bid modification via routine transmission procedures, only pertinent question is whether modification was mishandled under routine procedures. Based on review of record, GAO concludes that modification was reasonably processed under routine procedures even though modification was not delivered to specified individual until 5 hours after its receipt.
3. Based on review or record, GAO cannot conclude that activity actually received bid modification on day prior to bid opening as alleged by protester.
4. Ground of protest concerning alleged negligence of procuring activity in transmitting IFB amendment is untimely filed under § 20.2(b)(2) of GAO's Bid Protest Procedures (4 C.F.R. part 20 (1980)).

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SRM Manufacturing Company (SRM) protests the proposed award of a contract by the Navy Aviation Supply Office, Philadelphia, Pennsylvania, to A&K Manufacturing Company (A&K) under invitation for bids (IFB) NOO383-80-B-0285-SBSA. SRM complains that a telegraphic modification to its bid was designated improperly by the agency as late and excluded from consideration. Based on our review of the record, we deny the protest.

The IFB requested bids on the furnishing of bar assemblies in quantities of 21, 41, and 81 units. Originally, bids were to be opened on April 8, 1980, at 2 p.m.; however, the Navy, by IFB amendment dated March 24, 1980, increased the quantities required to 166, 186, and 226 units, respectively, and changed bid opening to April 18, 1980, at 2 p.m. At that time, three bids were received. SRM's bid quoted prices only for the original quantities and did not acknowledge the amendment changing the quantities.

One hour after bid opening, a telegraphic modification of SRM's bid was discovered by the person who opened the bids in his afternoon mail. The modification acknowledged the amendment and listed prices for the increased quantities. The telegram had not been addressed to the "attention of the bid opening room" or sent so "as to be received [by the Navy] on its equipment designated as TWX 710-670-0976" as required by clause C-361 of the IFB. Instead, the telegram was addressed to the attention of the buyer for the procurement and sent so as to be received at 9:14 a.m. on April 18, 1980, on TWX equipment in the Defense Industrial Supply Center Telecommunication Center (DISC) which is in another building approximately 200 yards from the bid opening room.

The Navy's contracting officer describes the probable course of the SRM modification after the modification's receipt by DISC, as follows:

"Given the fact that the mis-addressed SRM wire was received at DISC at 9:14 A.M. and assuming, in the absence of any other evidence, that normal procedures were followed, the probable course of this wire may be perceived. The earliest time at which the SRM wire could have arrived at the ASO mailroom is 11:30 A.M. As a result, the earliest time at which a mailroom delivery to the Purchase Services Branch could have been made would also have been 11:30 A.M. Because inclusion in the 11:30 A.M. mail run would have required receipt and retransmission at approximately the same time, it seems most probable that Purchase Services did not receive this wire until the next mail run at 1:30 P.M. * * * if the Purchase Services did not receive this wire until the 1:30 P.M. run, and delivered the wire on its next scheduled run at 2:30 P.M., the section secretary could not have delivered mail to the buyer's desk until 2:30 P.M. (or one-half hour after the bid opening). It therefore appears that, following established procedures for transmission of messages from DISC, this wire would most probably have arrived at the buyer's desk sometime after * * * 2:30 P.M."

Defense Acquisition Regulation (DAR) § 7-2002.2 (DAC #76-18, March 12, 1979), which was incorporated by reference into the IFB, provides, in part, that late modifications of bids will not be considered unless "it is determined by the Government that late receipt was due solely to mishandling by the Government after receipt at the Government installation." Since the Navy concludes that the late modification was not mishandled but rather handled through normal procedures, it has not considered SRM's telegram, thereby requiring rejection of SRM's bid.

In determining whether there has been mishandling at the Government installation, our Office will examine the procedures adopted for the receipt and further transmittal of messages to determine whether the means of receipt and transmittal are calculated to effect delivery within a reasonable time. See, Stack-On Products Company, B-181862, October 22, 1974, 74-2 CPD 220. In the same decision, we also recognized that at installations which receive voluminous numbers of telegraphic communications daily, it may be necessary to handle telegrams which are not marked urgent in a standardized manner and in such circumstances immediate transmission of the communications to the proper office may not be feasible; on the other hand, where a telegram is marked "Rush" and the volume of telegraphic communications handled by the Government installation is not excessive, the delivery of a telegraphic bid modification via routine mail constitutes mishandling per se on the part of the Government. See, 46 Comp. Gen. 771 (1967).

The Navy argues that it has adopted appropriate means for the receipt and delivery of telegraphic bid modifications given the volume of daily communications (1,800 messages at DISC and 600 messages at the ASO mailroom) processed through the facilities which handled the SRM modification.

The primary means employed for the expedited delivery of telegraphic bids at the installation is special TWX equipment. Specifically, the Navy argues that had SRM used the TWX address set forth in clause C-361 of the IFB, its modification would have been received at special TWX receiving equipment in the Purchase Division which is "essentially just across the hall from the Bid Opening Room." This equipment is "checked several minutes prior to bid opening to ensure that telegraphic modifications which arrive shortly before bid opening are timely received." Recognizing that some bidders will "misdirect bid modifications to DISC," DISC personnel are also instructed--as an alternate

procedure--to scan incoming headings for messages addressed to the Bid Opening Room. Messages so addressed are "given priority handling and should be received in the bid opening room approximately 15 minutes after receipt." Mailroom personnel also scan the headings of wires for "wires which mention bids, wires referring to bid opening dates, and wires directed to the attention of the Bid Opening Room." Messages so addressed are "immediately and directly transmitted to [the] Bid Opening Room" by mailroom personnel.

As to the practice of scanning only the headings of messages, the Navy states that the volume of messages handled by DISC "does not permit time for anything beyond a scan of the heading." As to the mailroom practice, the Navy specifically states:

"* * * the body of a message is scanned only if the addressee is unknown. In this case, the mailroom most probably would not have read beyond [the buyer's] name in the address and there would have been no reason for them to. As a matter of interest, the ASO mailroom processes 600 wires a day and 1600 other pieces of correspondence. This work is performed by four or five GS-5 routers who are not familiar with procurement terms."

Based on our review, we conclude that the Navy has instituted reasonable measures for the receipt and processing of urgent telegraphic messages given the daily volume of messages involved. Consequently, we agree that only those telegraphic bids which can be recognized as bids from scanning the headings of the involved messages are required to be processed in an expedited fashion under 46 Comp. Gen., above.

Since SRM did not use the TWX address prescribed in clause C-301 of the IFB, it was not the Navy's fault that the SRM modification was not processed through the primary means designated for rapid transmission of urgent telegraphic messages.

Similarly, since the heading of SRM's message did not contain words which would have directed expedited processing of the message, it was not the Navy's fault that the SRM modification was not processed through the alternate means for rapid transmission of urgent telegraphic messages. The question remains, however, whether the SRM modification was mishandled under the above-described process for routine messages.

Based on our review of the processing of the SRM modification, described above, we cannot conclude that the modification was mishandled under the procedures used for routine messages even though it took more than 5 hours for the message to be delivered from DISC to the buyer. For example, as to the handling of the SRM modification by the Purchases Services Branch, the Navy reports, as follows:

"* * *several hundred pieces of mail are handled by the Purchases Services Branch (which is divided into 15 sections). The clerk who handles the mail has a corollary duty processing contract folders. If the Purchases Services Branch did not receive a wire until 1:30 it would be very likely that the individual addressee would not have received it before 2:30 P.M. The individual clerk does not scan the body of messages or letters, particularly if they are addressed to a specified section or individual [as here]."

Thus, the SRM modification appears to have been reasonably processed under the applicable procedures for routine messages. Therefore, the late modification was properly excluded from consideration.

Other Issues

SRM also contends that the Navy received its modification at 6:06 p.m. on April 17, 1980, instead of 9:14 a.m. on April 18 as shown by the DISC time/

date stamp. The contracting officer has submitted a lengthy analysis of facts surrounding the submission of the SRM modification. In summary, the contracting officer has concluded:

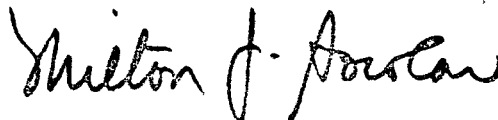
"* * * the [modification] was called in by [SRM] to the Moorestown, New Jersey, Western Union Office at 6:06 p.m., transmitted to the Philadelphia Western Union Office at 7:07 p.m., April 17, 1980, and transmitted by Western Union, Philadelphia to the DISC Telecommunication Center * * * the next morning."

Based on the contracting officer's analysis, we cannot conclude that the Navy actually received the modification on April 17.

Finally, SRM contends that the Navy was negligent in permitting the company only 1 day to respond to the March 24 amendment which SRM states it did not receive until April 17.

SRM must be charged with notice of a basis of protest about the alleged negligent transmission of the amendment no later than April 17, 1980. Since SRM's protest about the transmission of the amendment was not received until September 1980, this ground of protest is untimely filed under GAO's Bid Protest Procedures (4 C.F.R. part 20 (1980)) which require, at § 20.2(b)(2), that protests of the type involved here be filed not later than 10 days after the basis of protest is known or should have been known. Thus, we will not consider this ground of protest.

Protest denied in part and dismissed in part.



For the Comptroller General
of the United States