

DECISION

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

30372

FILE: B-216502**DATE:** February 7, 1985**MATTER OF:** Geiger Company**DIGEST:**

GAO sustains protest that agency improperly accepted a late bid. Acceptance is proper only where the government's improper action is the paramount cause of the lateness, and the rule does not apply if the bidder has not followed instructions for delivery set forth in a solicitation. The fact that a government employee may have contributed to the lateness in some minor way does not affect this result.

The Geiger Company protests the proposed award of a contract to DAC Construction Inc. under solicitation No. DABT10-84-B-0284, issued by the Department of the Army for interior painting and miscellaneous repairs at Fort Benning, Georgia. Geiger, the second-low bidder, alleges that DAC's low bid was late and therefore was improperly considered for award.

We sustain the protest.

The invitation for bids set bid opening at 1 p.m. on September 20, 1984; it specified that bids would be received at the Procurement Division, Building 35, Room 341, Fort Benning.

DAC's bid was hand-carried to Fort Benning by the company's vice president on September 20, 1984. While proceeding to Building 35, the vice president realized that he had left the informational package containing the room number in his car. Instead of retrieving this material, he went to the office of the chief of the Procurement Division to inquire as to the appropriate room for delivery. The vice president entered this office at approximately 12:45 p.m.

031159

B-216502

Upon entering this office, the vice president asked the secretary, who was a summer employee, where he should take DAC's bid. The secretary responded that he should go to conference room 260, located on the second floor of the building. Following their receipt and time-date stamping in room 341, bids were to be opened in this conference room.

Following these directions, the vice president went to the conference room. As this room was not occupied, he returned to the Procurement Division office and informed the secretary that he could not be late in submitting DAC's bid. After telephoning the bid opening officer, the secretary told him to go back to the conference room and wait.

While standing in the hallway outside the conference room a second time, the vice president told an employee of the Engineering Division that he was waiting to turn in DAC's bid. This employee escorted the vice president to room 341, where he met the bid opening officer. It was then approximately 1:03 p.m.

The bid opening officer initially stated that the bid was late and therefore not acceptable. After listening to the explanation offered by the vice president, the officer went to the Procurement Division office to verify the story; he then referred the matter to the contracting officer. As stated in the record, the contracting officer decided to accept DAC's bid because he determined that the bid would not have been late had the vice president not been misdirected.

Geiger maintains that DAC's bid should not have been accepted because it is the responsibility of prospective contractors to ensure that bids are submitted to the proper location. Furthermore, Geiger suggests that DAC could have obtained a possible advantage by altering its bid after discovering what other bids had been submitted.

As a general rule, a bidder has the responsibility of assuring the timely arrival of its bid at the place designated in the solicitation. However, a hand-carried bid that is received late may be accepted where improper government action was the paramount cause for the late delivery and consideration of the bid would not compromise

B-216502

the integrity of the competitive bidding system. Improper government action may be misdirection caused by government personnel. A misdirected late bid may be considered so long as the bidder acted reasonably and did not significantly contribute to the lateness. Raeten Construction Co., B-210681, Aug. 12, 1983, 83-2 CPD ¶ 203.

We do not believe these rules apply here. As the record indicates, the solicitation contained clear and concise delivery instructions for hand-carried bids. Had these directions been followed, DAC's vice president would not have had to seek the assistance of the secretary, and most importantly, its bid would have been submitted on time. We consider the failure of the vice president to recall these delivery instructions to be the paramount cause of the late bid and the secretary's actions as only incidentally contributing to the late bid, since once the Army provided explicit directions for delivery of bids in the solicitation, its obligations towards prospective bidders with respect to the timely delivery of bids were essentially fulfilled.

We sustain the protest and are recommending that the Army reject DAC's late bid.

Shelton J. Fowler
for Comptroller General
of the United States