

**DECISION**

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

31796

**FILE:** B-218614 **DATE:** July 26, 1985  
**MATTER OF:** Imperial Maintenance

**DIGEST:**

A hand-carried bid that is received at the bid opening location after the time set for bid opening may not be accepted for award where the bidder's failure to follow IFB procedures, rather than improper government action, was the paramount cause of the late delivery.

Imperial Maintenance (Imperial) protests the award of any contract to Viking Fence Company (Viking) under invitation for bids (IFB) No. N62467-85-B-7962, issued by the Department of the Navy to replace a security fence at Texas Terrace, Naval Air Station, Kingsville, Texas. Imperial contends that Viking's late bid should not have been accepted. We sustain the protest.

The IFB provided that bids would be received at the office of the Officer in Charge of Construction (OCC), building 4711 at the Naval Air Station, until 3 p.m. on May 7, 1985. At the time of bid opening only Imperial's bid of \$43,958 had been received. At approximately 3:25 p.m., a bid from Viking, in the amount of \$37,000, was received. The record indicates that Viking phoned the OCC on Thursday, May 2, to inquire about inspection of the worksite. Immediately after that call was terminated, Viking realized that another call was necessary to inquire about hand-delivery of the bid on Saturday. Instead of again contacting the OCC, however, Viking contacted the office of the Officer of the Day. Viking was informed that since Saturday was not a workday, any hand-delivered bid should be left with the Officer of the Day and would be delivered to the bid opening building on the following Monday.

Viking arrived in Kingsville on Friday evening and inspected the worksite. On Saturday morning, May 4, Viking prepared its bid, hand carried it to the base, and delivered it to the office of the Officer of the Day. The naval personnel in the office of the Officer of the Day advised

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Viking that the bid would be delivered to the proper building along with the guard mail on the following Monday, May 6. The bid had been placed in a large brown envelope, properly addressed to the Officer in Charge of Construction, building 4711, with reference to the IFB number and the bid opening date and time in the lower left-hand corner.

Viking never contacted the OCC prior to bid opening to determine whether its bid had been received from the office of the Officer of the Day. On Tuesday, May 7, between 2:45 and 3 p.m., the acting Officer of the Day found the envelope containing Viking's bid in the office. At 3:15, upon noting that it was addressed to the OCC, he contacted the OCC, who sent a messenger to pick up the envelope. The bid was taken to the bid opening room and recorded on the bid abstract.

Imperial contends that Viking's late bid may not be considered under the late bid provisions of the IFB, since it was not mailed, and there is no evidence of such mishandling by government personnel as to permit its consideration as a late hand-carried bid.

The Navy maintains that Viking's late bid should be accepted because Viking was misled by Navy personnel into leaving its bid in the wrong office, and Navy personnel failed to deliver Viking's bid to the bid opening location as they had told Viking they would. The Navy concludes that late delivery was due to mishandling by government personnel.

A bidder is responsible for delivering its bid to the proper place at the proper time, and late bids may be considered only as provided in the solicitation. Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 C.P.D. ¶ 330. Although the standard late bid provisions apply only to mailed bids, 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 the integrity of the competitive bidding system. Improper government action may be misdirection from government personnel, but the fact that a government employee may have contributed to the lateness in some minor way does not justify acceptance of the late hand-carried bid on the grounds of improper government action. Geiger Co., B-216502, Feb. 7, 1985, 85-1 C.P.D. ¶ 155.

The IFB here specifically advised that all hand-delivered bids were to be deposited in the bid box in the office of the OCC in building 4711 prior to the time and date set for bid opening, and that any bids submitted by hand after the time set for receipt would not be accepted. Had Viking complied with these express IFB terms, its bid would have been timely received. Instead, Viking relied on information from the office of the Officer of the Day, who the record seems to indicate had no authority to accept bids and no established procedures for delivery of bids to the bid opening room. Although the bid ordinarily might be expected to be delivered to the proper location when the guard mail is delivered, there is no assertion or evidence from the Navy that the failure to timely forward Viking's bid from the office of the Officer of the Day to the OCC was due to a breakdown in established bid delivery procedures.

Under these circumstances, we consider Viking's disregard of the express IFB terms to be the paramount cause of the late bid. While the misleading information from Navy personnel and the failure to forward the bid to the OCC contributed to the lateness, we view these factors as incidental rather than paramount; once the Navy provided explicit directions in the IFB for hand-carried bids, its obligation toward prospective bidders with respect to timely delivery was fulfilled. Geiger Co., B-216502, supra.

The Navy argues that the intent and spirit of the late bid regulations would be served by considering Viking's bid since the bid was in the Navy's possession prior to bid opening, eliminating the possibility that Viking would gain an unfair advantage over other bidders.

We do not agree that Viking would not have an unfair advantage over other bidders if its bid were accepted. First, it is not at all clear that Viking's bid was in safekeeping once delivered to the office of the Officer in Charge; the bid apparently was not time/date stamped on receipt and, apparently, was not held in a safe after delivery. Second, on the question of fairness to bidders, the IFB clearly notified bidders of the requirements for timely bidding as well as the other rules governing the competition. Imperial met these requirements--at whatever cost or inconvenience--in submitting its timely bid. Viking did not meet the requirements, and its bid, we have found, was late for this reason. While we have applied general

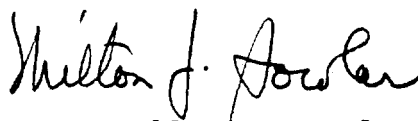
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equitable principles in allowing consideration of certain late bids where the agency is principally responsible for the lateness, Sun International, B-208146, Jan. 24, 1983, 83-1 C.P.D. ¶ 28, we have found that this was not the case here.

We conclude that Viking's late bid could not be accepted for award and, therefore, recommend that award be made to Imperial, if found otherwise eligible.

The protest is sustained.

for   
Comptroller General  
of the United States