



The Comptroller General
of the United States

Washington, D.C. 20548

WRS/fell

Decision

Matter of: Microflect
File: B-225118
Date: February 17, 1987

DIGEST

1. Protest is sustained where agency failed to transmit to the bid opening site prior to bid opening a bid received at the agency's mailing address (a post office caller number) more than 4 hours before bid opening.
2. Protester is entitled to the costs of preparing its bid and pursuing its protest where protest is sustained and no other remedy is appropriate due to substantial completion of contract performance.

DECISION

Microflect protests the Federal Aviation Administration's (FAA) rejection as late of its bid under invitation for bids (IFB) No. DTFA11-86-B-00097 for the construction of self-supporting microwave antenna towers at six FAA sites in Oregon, Washington, and Colorado. The IFB provided for award to the low bidder for each state. Microflect's prices for two of the three states would have been low if its bid had been considered. We sustain the protest.

The IFB set bid opening for 2 p.m. on September 16, 1986. Microflect submitted its bid to the U.S. Postal Service for Express Mail delivery on September 15 at 5 p.m. The bid was addressed to the location to which bids were to be submitted according to the solicitation's cover letter.^{1/} The Postal Service attempted to deliver the bid package at 9:25 a.m. on September 16. According to information received from an employee at the post office to which the package was delivered, a notice of the package's arrival was placed with the other FAA mail awaiting pickup. It appears that the bid was not picked up until 8:08 a.m. on September 17, and was not received at the bid opening location until 10:05 a.m. on the 17th.

^{1/} The address included FAA's post office caller number. Mail addressed to a caller number is held at the post office for pickup by the caller (i.e. addressee).

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Microflect argues that its bid was improperly rejected as late since it was addressed correctly and was in fact delivered to that address in time for it to have been received at the bid opening location by the deadline. FAA disagrees, contending that Microflect was responsible for the late delivery because it misaddressed the bid. According to FAA, a bid sent by Express Mail is equivalent to a hand-carried bid and therefore should have been sent to the address specified in the solicitation for the delivery of hand-carried bids rather than to FAA's mail address.^{2/}

Although we regard bids sent by commercial carrier, such as Federal Express, as hand-carried, Nanco Labs Inc., B-220663, et al., Nov. 27, 1985, 85-2 CPD ¶ 613, we have not held that bids delivered by Express Mail are hand-carried. The purpose of specifying a place to which bids may be hand-carried is to accommodate bidders who elect not to use the mails and whose submissions can therefore not be delivered to post office boxes or caller numbers. Retsina Co., B-212471, Aug. 3, 1984, 84-2 CPD ¶ 148. Express Mail is a service of the U.S. Postal Service, and thus there is no reason that a bid sent by Express Mail may not be addressed to a post office box or caller number. We therefore disagree with FAA's position that Microflect's bid was misaddressed.

The agency maintains that even if the bid was properly addressed it cannot be considered under the solicitation's late bid clause. The solicitation incorporated by reference the standard late bid clause set forth at Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7 (1986), which provides that a late bid will be considered only if it was received before award and (1) was sent by registered or certified mail at least 5 days prior to the opening date, or (2) the late receipt was due solely to government mishandling after receipt at the government installation.

We agree that neither of these exceptions apply here. Express Mail is not considered certified or registered mail for purposes of the first exception, Nuaire, Inc., B-221551, Apr. 2, 1986, 86-1 CPD ¶ 314, and, in any event, Microflect's bid was not mailed until the day before bid opening. The second exception does not apply because the

^{2/} According to the solicitation, hand-carried bids were to be delivered to the 4th floor of the FAA facility. Mailed bids were to go to the local post office under the caller number set forth in the solicitation cover letter.

bid was already late when it was received at the government installation, which, within the context of the late bid clause, means the local agency office, not the local post office. Id.

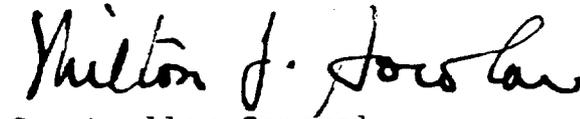
We have, however, recognized that there are situations not covered under the late bid clause that justify consideration of a late bid. If a protester can show that government mishandling during the process of receipt (as distinguished from mishandling after receipt) was the paramount reason its bid was late, the bid may be considered. Sun International, B-208146, Jan. 24, 1983, 83-1 CPD ¶ 78. Where bids are received at one place by the government (i.e. a post office box or caller number location) for delivery by it to another place for bid opening, the agency has a duty to establish procedures to ensure that the physical transmission of bids is accomplished within a reasonable time of their receipt. Thus, mishandling may be charged to the government where the delay in the transmission of a bid is due to the agency's failure to use a transmittal procedure that would have permitted the bid to be delivered to the contracting officer within a reasonable time before bid opening. Nuaire, Inc., B-221551, supra.

Here, it appears that the post office left notice of the arrival of Microflect's Express Mail package in an appropriate location at 9:25 a.m. on September 16, and that the package remained at the post office available for pickup for the next 4-1/2 hours. FAA has not argued that its representatives checked the post office at any point during this time period. It therefore appears that FAA failed to learn that Microflect's bid had been received at the post office because it failed to check its mail at the post office any time after 9:25 a.m. and before 2 p.m. on the day of bid opening.

The solicitation provided that bids under this procurement were to be mailed to the FAA's post office caller number. Hence, FAA had a duty to check at the post office for bids received sufficiently in advance of bid opening to permit their timely transmission to the bid opening site even if mail pickups were not regularly scheduled during this time period. See E.M. Brown, Inc., B-218375, June 17, 1985, 85-1 CPD ¶ 691. Four and one half hours was more than enough time to permit transmission of Microflect's bid from the post office to FAA's offices. We thus conclude that the FAA did not comply with its duty to assure that the physical

transmission of bids from the post office to the bid opening location was accomplished within a reasonable time of receipt. We therefore sustain Microflect's protest.

Since, however, award has been made and performance substantially completed, we are unable to recommend that Microflect be considered for award under the items for which it was low. Therefore we conclude that the protester is entitled to the reasonable costs of preparing its bid for the two states under which its bid was low and to its costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. §§ 21.6(d) and (e) (1986); EHE National Health Services, Inc., 65 Comp. Gen. 1 (1985), 85-2 CPD ¶ 362. Microflect should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(f).

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