



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Electrostatic Painting, Inc.  
File: B-227928.2  
Date: October 2, 1987

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### DIGEST

Protest that bid improperly was rejected as late is denied where protester was on notice 9 days before bid opening, by reason of the certified mail receipt, that its bid had been delivered to the wrong agency but the took no further action to ensure timely delivery of the bid.

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### DECISION

Electrostatic Painting, Inc., protests the rejection as late of the bid it submitted in response to General Services Administration (GSA) invitation for bids (IFB) No. KPS-B-KV257-B2-S, for metal furniture painting.

We deny the protest.

The IFB, which set bid opening for 1:30 p.m. on April 15, 1987, required mailed bids to be sent to the General Services Administration Business Service Center - 6SB, 1500 East Bannister Road, Kansas City, Missouri 64131-3088. GSA did not receive a bid from Electrostatic. Upon inquiry, after bid opening, GSA was advised by Electrostatic that on April 2 it had sent a bid by certified mail; after then checking the return receipt, however, Electrostatic noted that the bid had been signed for on April 6 by an employee of the Internal Revenue Service Office located at 2306 East Bannister Road.

The contracting officer contacted the IRS and, on April 24, the bid was located in the IRS procurement unit. The bid had been opened, and neither of the two copies that should have been included nor the envelope the bid had been mailed in was discovered. Also, although the Chief of the IRS procurement unit said she had received the bid, and the two copies, on April 10, the bid was not stamped with the date or time of receipt. Electrostatic protests the contracting

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officer's decision that the bid, which was the lowest one submitted, could not be considered for award, and requests that we advise GSA to award the firm the contract. Electrostatic also requests reimbursement for the costs it incurred in submitting its bid and in pursuing this protest.

Generally, a bid that does not arrive at the office designated in the solicitation by the specified time is late and may not be considered for award. G.M. Coen & Associates, Inc., B-225554, Feb. 12, 1987, 87-1 C.P.D.

¶ 156. There are, however, exceptions to this rule. Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1 (1986), a late bid that was sent by certified mail may be considered if it is received before contract award and as shown either by the postmark on the wrapper or the original receipt from the postal service the bid was sent not later than 5 calendar days before the bid receipt date specified.

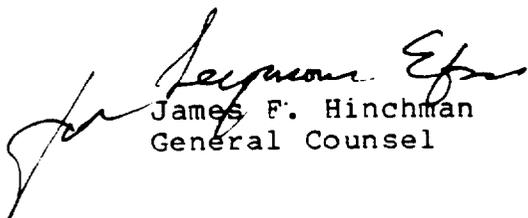
Electrostatic protests that GSA must consider its bid because the record demonstrates that it mailed the bid by certified mail more than 5 days before bid opening. GSA, in arguing that Electrostatic's bid may not be considered for award, first asserts that although the contracting officer retrieved Electrostatic's bid from the IRS, the bid never actually was received in the office designated in the solicitation for the receipt of bids and therefore should not be found eligible for award. Second, GSA argues that Electrostatic, with its receipt for certified mail and its return receipt signed by the IRS, has demonstrated only that on April 2 it mailed a package to the GSA address specified in the solicitation and that on April 6 this package was delivered to the IRS. According to GSA, Electrostatic has not proven that the April 2 package contained a bid, much less the bid later located at the IRS. Finally, GSA expresses concern that after bid opening Electrostatic had the choice whether to have its bid considered by revealing or deciding not to reveal where the bid was located.

We think the bid properly was rejected. The cited regulation contemplates that a party places its bid in the mail, expects that the bid was timely delivered, and learns after bid opening that, through no fault of its own, the agency did not timely receive the bid. In other words, the regulation permits a late bid to be considered where a party does not know until after bid opening that the bid was not timely received and the party had no opportunity after releasing the bid to the postal service to cause the agency to timely receive the bid. That is not the case here. Bid opening took place on April 15th and Electrostatic knew or should have known on April 6th, by reason of the return receipt, that its bid had been delivered to the IRS rather

than to GSA at the address specified in the solicitation. Electrostatic therefore had the further opportunity to submit a timely bid to GSA, but did nothing even though the return receipt showed that the bid had been delivered to the wrong agency.

Accordingly, GSA properly rejected Electrostatic's bid. Since Electrostatic's protest is without merit, Electrostatic is not entitled to reimbursement of the costs it incurred in preparing its bid and in pursuing this protest. See Friends of the Waterfront, Inc., B-225378, Jan. 6, 1987, 66 Comp. Gen. \_\_\_\_\_, 87-1 C.P.D. ¶ 16.

The protest is denied.

  
James F. Hinchman  
General Counsel