



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barnes Electric Company, Inc.

File: B-241391.2

Date: January 4, 1991

R.I. Rae for the protester.
Joseph A. Solis, for J&S Electric Company, an interested party.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Katherine I. Riback, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's bid, delivered by a common carrier, was properly rejected as late where it did not arrive at the location designated for bid opening on time because the outer bid envelope was addressed and delivered to an individual who was not the bid opening officer and was not marked with any information identifying it as a bid or referring to the solicitation number and time of bid opening.

DECISION

Barnes Electric Company, Inc. protests the rejection of its bid under invitation for bids (IFB) No. F29650-90-B-0030, issued by Kirtland Air Force Base (AFB), New Mexico, for replacement and disposal of electrical transformers. The bid was rejected because it was not received at the bid opening location until after the scheduled bid opening.

We deny the protest.

The IFB, issued on August 9, 1990, scheduled bid opening for September 21, 1990, at 1 p.m. The solicitation directed bidders to address their bids to: Directorate of Contracting/PKDC, Bldg. 499, Bid Depository/1st Floor Lobby, Kirtland AFB, New Mexico, 87117-5320. The cover sheet of the solicitation instructed bidders to plainly write the solicitation number, and the date and time set for bid opening, on the outside of the bid envelope. The agency also provided a sticker for this purpose in the solicitation package, with the statement that it was "imperative" that the requested information be inserted in the blank spaces on the sticker, which was to be pasted on

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the lower left corner of the envelope. The solicitation specifically warned bidders intending to deliver their bid by a commercial carrier, such as Federal Express, to "please insure that the contents are identified as a Sealed Bid on the outer envelope."

The protester's bid was delivered by Federal Express to the receptionist's desk in Building 499 at 8:39 a.m. on the morning of the bid opening day.^{1/} The Federal Express envelope was addressed to the previous buyer for the project at: Directorate of Contracting PKDC/Building 499 1st Floor Bid Room/ Kirtland AFB, New Mexico 87117. There were no notations on the Federal Express envelope indicating its contents. Since nothing on the envelope placed the receptionist on notice of the need for immediate delivery, she followed standard distribution procedures by signing the Federal Express receipt and delivering the envelope to the "in" box of the individual, who was away from his desk. Shortly after bid opening, the envelope was discovered by the individual, who presented it to the Bid Opening Official.^{2/} The bid was rejected as late. This protest followed.

Barnes contends that government mishandling was the primary cause of the late receipt of its bid, because the bid was received at Building 499 prior to bid opening but the agency personnel failed to immediately deliver the bid to the bid room.

This is not the first occasion in which a bid was rejected as late because of the lack of information on the outer envelope used by a commercial carrier, such as Federal Express. See Weather Data Serv. Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582. In this case, the agency was sufficiently concerned about the possibility that in the IFB it placed an explicit warning to bidders who elected to use a common carrier, that

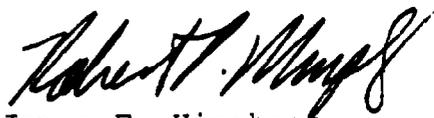
1/ Barnes placed its bid in an envelope provided by its bonding company which was correctly addressed, including the solicitation number and the bid opening date, and which identified the contents as a bid. The information on this envelope, however, was not visible because it was placed inside a Federal Express envelope for delivery. It is the information on the Federal Express envelope that is at issue here.

2/ Five bids were received in response to the solicitation. The first and second-low bids were determined to be nonresponsive. Barnes' third-low bid was rejected as late. The contract was awarded to J&S Electric Company, Inc., the fourth-low bidder.

they should "insure that the contents are identified as a Sealed Bid on the outer envelope."

Bidders are responsible for delivering their bids to the proper place at the proper time. Id. A bid delivered by a commercial carrier is hand-carried and is late when it does not arrive timely at the location designated in the solicitation unless some improper government action is shown to be the sole or paramount cause for lateness. Hans Olsen Egg Co., Inc., B-235085, July 24, 1989, 89-2 CPD ¶ 75. Such a bid may only be considered when some improper government action is shown to be the sole or paramount cause for lateness. In this instance, the protester addressed the envelope to an individual rather than to the "bid depository" as instructed. Moreover, the protester failed to mark the Federal Express envelope as containing a "Sealed Bid" with the solicitation number and the time and date set for bid opening, as it had been instructed to do. In the absence of markings on the Federal Express envelope that would identify its contents as a bid, requiring urgent delivery, we find that the bid was properly rejected as late because the actions of the protester in not correctly addressing and labeling the Federal Express envelope contributed to the late delivery of the bid, not government mishandling.

The protest is denied.


for James F. Hinchman
General Counsel