



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Racal Recorders, Inc.

File: B-254286

Date: November 16, 1993

Bryan E. Hopkins, Esq., The Racal Corporation, for the protester.

Walker L. Evey, National Aeronautics and Space Administration, for the agency.

Paula A. Williams, Esq., and Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency lost and thus failed to consider the protester's low bid is denied. The agency is not permitted to make award to a firm whose bid may have been lost by the agency prior to bid opening date; to do so would be inconsistent with preserving the integrity of the competitive bidding system.

DECISION

Racal Recorders, Inc. protests the award of a contract to TEAC America, Inc. under invitation for bids (IFB) No. 3-522065, issued by the National Aeronautics and Space Administration (NASA), Lewis Research Center in Cleveland, Ohio. Racal alleges that the agency improperly mishandled and subsequently lost its allegedly lower-priced bid which was delivered prior to bid opening.

We deny the protest.

On June 2, 1993, the agency issued the solicitation to purchase a TEAC Model XR-5000 video cassette data recorder or equal. The IFB was amended to clarify the specifications and the bid opening date was extended to July 7. NASA received three bids at bid opening, but not one from the protester. Award was made to TEAC, the lowest responsive, responsible bidder on July 19, in the amount of \$33,270.00.

Racal states that on June 30, it sent two packages by Federal Express to the agency. Both packages were delivered to the agency's mailroom on July 1, and were signed for by an agency employee. According to the protester, one package

contained its bid; the other contained its signed amendment to the IFB. Racal alleges that it submitted a lower bid than TEAC's and had its bid been considered, it would have been the low responsive bid. Racal seeks termination of the contract awarded to TEAC and reconsideration of all bids, including its own.¹

The agency admits that it received two Federal Express packages from Racal on July 1. The agency explains that since one package was identified as a bid, it was recorded on the mailroom receiving log as a bid to be delivered to mail stop 500-302, which is the designated mail stop at the agency for receipt of bids. This package was not opened in the mailroom but was forwarded to mail stop 500-302. The log entry for the second package from Racal acknowledges receipt on behalf of Tim Pierce. The agency further explains that Mr. Pierce is the contracting officer for this procurement and that his designated mail stop is 500-309, to which the unopened package was forwarded.

On July 7, when bids were opened, the only submission recorded on the bid abstract from Racal was its signed acknowledgement of the amendment to the IFB. The agency reports that the amendment was in the Federal Express package which was delivered to mail stop 500-302. Since neither packages were opened in the mailroom, the agency states that it cannot verify whether a bid was contained in the Federal Express package sent to mail stop 500-309; that package cannot be found and is presumed to be lost. Under these circumstances, NASA asserts that there is no independent evidence, apart from the protester's assertions, that the Federal Express package which was lost after delivery to the agency contained a bid.

Where an apparent bidder has complied with all of the requirements of a particular solicitation, but its bid has been lost after being received at the contracting agency prior to bid opening, the bidder cannot be permitted to resubmit its bid since there is no certainty that a subsequently submitted copy would be identical to the original that was received and lost. Rodeo Road Equip., Inc., B-242093, Mar. 7, 1991, 91-1 CPD ¶ 256. Displacing an otherwise successful bidder on the basis of a bid provided after bid opening would not be consistent with maintaining the integrity of the competitive system. Id.

While it is unfortunate that Racal's bid was lost, we recognize that even with appropriate procedures in place, an agency may occasionally misplace a bid. The occasional

¹The protester has not submitted a copy of its bid that was allegedly delivered to NASA prior to bid opening.

negligent loss of a bid by an agency does not entitle the vendor to any relief. See Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244. There is no evidence in the record that the loss of Racal's bid was other than an isolated, inadvertent event; therefore, we have no basis to disturb the award to TEAC.² Id.

The protest is denied.



for James F. Hinchman
General Counsel

²In its comments on the agency report, Racal alludes to the fact that it has recently filed several bid protests against NASA presumably as evidence of an effort by procurement officials to exclude Racal from receiving NASA contracts. However, the fact that Racal has filed several protests with our Office simply does not establish that the loss of its bid package was the result of a specific intent on the part of NASA procurement officials to harm the protester or otherwise evidences bad faith.