



Comptroller General
of the United States

11521

Washington, D.C. 20548

Decision

Matter of: B.E.C. Medical Products

File: B-256483

Date: February 28, 1994

James A. Quick for the protester,
John L. Formica, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly rejected bid as nonresponsive under an invitation for bids containing a bid sample requirement, where the bid sample was received late by the agency because of adverse weather conditions.

DECISION

B.E.C. Medical Products protests the rejection of its bid under invitation for bids (IFB) No. 583-20-94, issued by the Department of Veterans Affairs, Indianapolis, Indiana.

We dismiss the protest.

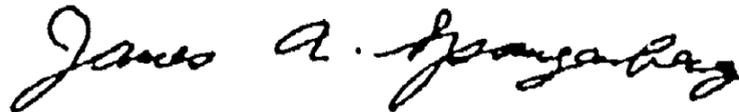
The IFB contained a requirement that bid samples be submitted with the bids. The bids were opened on January 20, 1993. Although B.E.C.'s bid was timely received by the agency, the protester's bid sample was not received until January 24. The agency thus rejected B.E.C.'s bid as nonresponsive because at the time of bid opening the bid was unaccompanied by a bid sample.

The protester admits that its bid samples did not accompany its bid and were delivered late to the agency. The protester explains, however, that its bid samples were shipped by United Parcel Service (UPS) on January 17, and attributes UPS' failure to deliver the bid samples to the agency to extreme inclement weather. The protester argues that its late submission of its bid samples should be waived by the agency, and its bid considered responsive, because the protester "did everything reasonable to get [its] samples to the . . . VA on time and should not be punished for an 'act of nature' that caused [its] samples to arrive late."

It is the bidder's responsibility to assure timely receipt of its bid, including bid samples if required, and the bidder must bear the responsibility of the late arrival of its bid or bid samples unless the specific conditions set forth in the Federal Acquisition Regulation (FAR) for consideration of late bids are met. See Orange Shipbuilding Co., Inc., B-230285, Mar. 9, 1988, 88-1 CPD ¶ 246. These rules permit the consideration of late bids, including bid samples, which were sent by certified or registered mail at least 5 days prior to bid opening, or sent by United States Postal Service Express Mail Next Day Service not later than 5:00 p.m. at least 2 working days prior to the bid opening, or where the sole or paramount cause of late receipt is government mishandling after receipt at the government installation. FAR § 14.304-1.

B.E.C.'s bid was not sent by certified, registered, or U.S. Postal Service Express Mail, and the severe weather that B.E.C. asserts was responsible for the late submission of its bid samples is not a reason that would permit the acceptance of its sample. Orange Shipbuilding Co., Inc., supra; FAR § 14.304-1. The agency thus acted properly in not considering B.E.C.'s late bid samples and rejecting B.E.C.'s bid as nonresponsive. See EEV, Inc., B-253061, July 23, 1993, 93-2 CPD ¶ 52.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel