



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

Matter of: Aztec Development Company

File: B-256905

Date: July 28, 1994

Kent P. Smith, Esq., Smith & Fleming, for the protester.  
William R. Larson, Marine Contracting Corporation, an  
interested party.  
Timothy L. Felker, Jr., Esq., and Lester Edelman, Esq.,  
Department of the Army, for the agency.  
Henry J. Gorcsycki, Esq., and Guy R. Pietrovito, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

A late bid delivered by commercial carrier was properly rejected, despite the solicitation's incorrect address for the issuing office, where the paramount cause of the late delivery was the bidder's failure to properly address its bid package to the address stated in the solicitation for the receipt of hand-carried bids.

### DECISION

Aztec Development Company protests the rejection of its hand-delivered bid, as late, under invitation for bids (IFB) No. DACW31-94-B-0020, issued by the U.S. Army Corps of Engineers for maintenance dredging of Little Wicomico River, Northumberland County, Virginia.

We deny the protest.

The IFB, issued December 30, 1993, sought bids for dredging services and provided addresses for the delivery of bids by mail or hand. For hand-delivered bids, bidders were instructed in section L that "[b]ids may be delivered in person to the Contracting Division, Baltimore District, Corps of Engineers, Room 7000, City Crescent Building, 10 South Howard Street, Baltimore, Maryland." Bidders were also informed that bids must be submitted in sealed envelopes or packages, addressed to the office specified in the solicitation, and showing the time specified for receipt, the solicitation number, and the name and address of the bidder. See Federal Acquisition Regulation (FAR) § 52.214-5.

Four IFB amendments were issued. The third amendment, issued January 28, 1994, set bid opening for February 23. The fourth amendment, issued February 9, made a number of changes to the IFB including revising the solicitation/contract form, Standard Form (SF) 1442. As amended, block 7 listed the address of the agency's issuing office as:

"Department of the Army  
Baltimore District, Corps of Engineers  
City Crescent Building  
10 South Howard Street, Room 702  
Baltimore, Maryland 21201."

The address stated for the issuing office was incorrect. There is not a Room 702 in the City Crescent Building. The correct room number of the issuing office is 7000.

The agency states that the fourth amendment was mailed to all bidders on the bidder's list, including Aztec, on February 9. Aztec states, however, that it did not receive a copy of the amendment in the mail, but received the amendment by facsimile transmission on February 22. Aztec sent its bid via commercial carrier, Airborne Express, for hand-delivery on February 23 before bid opening at 2:30 p.m. Aztec's bid package was addressed to the issuing office's address, as incorrectly identified on the amended SF 1442. Airborne Express delivered Aztec's bid to the Department of Housing and Urban Development (HUD) on the fifth floor of the City Crescent Building at 10:25 a.m. on February 23.

The Corps received four bids at the February 23 bid opening, including Marine Contracting Corporation's apparent low bid of \$195,000. Aztec's bid was not received by the Corps at bid opening. After bid opening, Aztec called the Corps and learned that the agency had not received the firm's bid. The next day, HUD delivered Aztec's \$191,265 bid to the Corps. Aztec requested that the agency consider its bid in light of the incorrect issuing office address given by the agency on the amended SF 1442. The agency determined that the late delivery was not the result of agency action and rejected Aztec's bid as late. This protest followed.

Aztec argues that since its bid was properly addressed to the agency, using the address identified in block 7 of the amended SF 1442, the late delivery of its bid is solely or primarily attributable to the agency's negligence in providing an incorrect address in the solicitation amendment. In this regard, Aztec complains that the government's late delivery of the fourth amendment prevented Aztec from mailing its bid to the agency, as Aztec suggests it would have done.

A bid received in the office designated for the receipt of bids after the time set for bid opening is a late bid. FAR § 14.304-1. A bidder is responsible for delivering its bid to the proper place at the proper time and late delivery of a bid generally requires its rejection even if it is the lowest bid. Hi-Grade Logging, Inc., B-222230; B-222231, June 3, 1986, 86-1 CPD ¶ 514. A bid delivered by a commercial carrier is a hand-carried bid and must be reflected as 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. Barnes Elec. Co., Inc., B-241391.2, Jan. 4, 1991, 91-1 CPD ¶ 10. Where late receipt results from the failure of a bidder, or the commercial carrier hired by the bidder, to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late bid may not be considered. Braceand Bros., Inc., B-248234, Aug. 3, 1992, 92-2 CPD ¶ 69; John Holtman and Sons, Inc., B-246062, Feb. 13, 1992, 92-1 CPD ¶ 187.

Here, the Corps properly rejected Aztec's bid as late. Bidders were informed that the agency's designated office for the receipt of hand-carried bids was Room 7000 in the City Crescent Building. This address was not changed by the solicitation amendment.<sup>1</sup> Aztec addressed its hand-carried bid, however, to the non-existent Room 702, which was stated in the fourth solicitation amendment to be the issuing office, not the designated office for receipt of hand-carried bids.

Aztec argues that under the standard "Order of Precedence" clause set forth in the solicitation, see FAR § 52.214-29 (FAC 90-10), the inconsistency in the solicitation between the address of the issuing office and of the designated office for the hand-delivery of bids was to be resolved in favor of the issuing office address.<sup>2</sup> We disagree. The use of the "Order of Precedence" clause presupposes an inconsistency in the solicitation that cannot be resolved by reading the solicitation as a whole. Here, the IFB does not

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<sup>1</sup>The address for mailing bids was also not amended.

<sup>2</sup>The "Order of Precedence" clause provides:

"Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications."

contain an inconsistency to which the "Order of Precedence" clause must be applied. The designated office for the hand delivery of bids was correctly and unambiguously provided in the IFB. While the address for the issuing office was in error, bidders were not instructed to hand deliver (or mail) their bids to the address specified for the issuing office.

Given Aztec's failure to correctly address its hand-carried bid package to the office designated in the IFB and the lack of government conduct misdirecting Aztec's bid, we have no basis to find that improper government action was the sole or paramount cause for the bid's lateness. See Sancland CDC Enters., B-252796; B-252797, July 19, 1993, 93-1 CPD ¶ 36, recon. denied, B-252796.2; B-252797.2, Dec. 14, 1993, 93-2 CPD ¶ 316.

In any event, we find that Aztec's commercial carrier did not act reasonably in delivering the bid. Specifically, the address on the amended SF 1442 and the Airborne Express delivery label correctly identified the addressee as the "Department of the Army, Corps of Engineers" at the City Crescent Building. The directory in the lobby of that building identifies the Corps's offices as being on the seventh floor. Thus, even though the issuing office's room number on the SF 1442 and the delivery label was incorrect, the bid package still correctly directed Airborne Express to the seventh floor; the Corps is the only occupant of the seventh floor. Although this information alone should have been sufficient to permit a reasonable carrier to locate the Corps, the phone number for the contracting office was readily available from the delivery label directly below the Corps's address, which the carrier could have used to request whatever additional directions it may have desired. In our view, the address and phone number provided on Aztec's bid package provided sufficient information to make possible the timely delivery of the bid to the Corps.

Aztec also asserts that the misdelivery is attributable to its receiving amendment four late, or to HUD's delay in delivering Aztec's bid to the Corps of Engineers. The record shows that Aztec's late receipt of the amendment did not prevent timely delivery of Aztec's bid because Airborne Express made the delivery to the City Crescent Building

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<sup>3</sup>The airbill number assigned by Airborne Express to Aztec's bid package appears on an Airborne Express "customer cartage manifest" with 11 other packages, all of which were delivered to HUD on the fifth floor of the City Crescent Building. This suggests that Airborne Express directed delivery of Aztec's bid to HUD even before arriving at the building, which indicates that the incorrect room number had no influence on this misdelivery.

4 hours before bid opening, which reasonably should have permitted the carrier sufficient time to locate the contracting office prior to bid opening, even with an incorrect room number, given the circumstances explained above. Nor does the delivery by HUD the next day provide a basis for protest as it is well established that actions must be attributable to the procuring agency in order to invoke an exception to the late-delivery rule; actions of other government agencies are not generally relevant. See Austin Telecommunications Elec. Inc., B-254425, Aug. 19, 1993, 93-2 CPD ¶ 108.

The protest is denied.

/s/ Ronald Berger  
for Robert P. Murphy  
Acting General Counsel

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‘To the extent that Aztec may be asserting that bid opening should have been extended because it did not provide sufficient time for Aztec to use other means of delivery, the protest is untimely as this alleged apparent solicitation impropriety should have been protested prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1994); Gould Metal Specialties Inc., B-246686, Mar. 27, 1992, 92-1 CPD ¶ 311.