



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Selrico Services, Inc.

File: B-259709.2

Date: May 1, 1995

James E. Long, Jr., for the protester.

Joseph L. Miller, Esq., Department of the Air Force, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Late bid was properly rejected, since government action was not the paramount cause of the lateness of the bid, notwithstanding bidder's contention that it would have submitted a timely duplicate bid if agency personnel had not inaccurately advised it that its original bid had already been received.

DECISION

Selrico Services, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. F29651-95-B-0002, issued by the Department of the Air Force. Selrico contends that inaccurate information provided by the agency caused the protester not to submit a timely bid.

We deny the protest.

The Air Force issued the solicitation to obtain bids for mess service attendant services at two dining facilities located at Holloman Air Force Base. Bid opening was scheduled for 2 p.m., Tuesday, December 13, 1994.

Selrico states that it sent its bid by commercial courier on Saturday, December 10, for delivery on Monday, December 12. For reasons not explained in the record, the commercial courier did not deliver the bid until Wednesday, December 14 at 3:35 p.m. Because the bid was received after bid opening, it was rejected as late.

Six hours before bid opening on December 13, the protester had telephoned the agency to ask whether its bid had arrived. A contract administrator checked the bid box and,

mistakenly identified the bid of a similarly named company from the same city, Scimco Building Services, as that of the protester, the contract administrator responded that Selrico's bid had been received.

The protester contends that, if it had been advised on the morning of December 13 that its bid had not been received, it could have had another copy hand-delivered before bid opening. Arguing that inaccurate information from the agency caused Selrico not to submit a timely bid, the protester contends that the agency should not have rejected its bid as late.

As a general rule, an offeror has the responsibility of assuring the timely arrival of its proposal at the place designated in the solicitation. However, a hand-carried offer that is received late may be accepted where improper government action was the paramount cause for late delivery and the integrity of the procurement process would not be compromised by acceptance of the offer. St. Charles Travel, B-226567, June 5, 1987, 87-1 CPD ¶ 575. An offer delivered to an agency by a commercial carrier is considered to be hand-carried and, if it arrives late, may only be considered for award if it is shown that some government impropriety was the sole or paramount cause of the late arrival at the designated place. The Chappy Corp., B-252757, July 20, 1993, 93-2 CPD ¶ 44. This exception to the general rule barring consideration of a late bid is narrowly construed, and may not be invoked where the offeror significantly contributed to the late receipt of the bid. See Hausted, Inc., B-257087, July 28, 1994, 94-2 CPD ¶ 49; Select, Inc., B-245820.2, Jan. 3, 1992, 92-1 CPD ¶ 22.

While it is true in this case that the contract administrator was mistaken in saying that Selrico's bid had been received, that mistake does not require the government to accept the late bid. The government has no obligation to advise bidders of whether their bids have arrived and its failure to do so--or even, as in this case, its providing inaccurate information about whether a bid has arrived--does not provide a ground for requiring an agency to consider a late bid. Cf. Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161 (agency's failure to return telephone call inquiring whether bid had been received is not a ground for consideration of a late bid). We note in this regard that there is no indication in the record that the inaccurate information provided was the result of anything other than confusion between two somewhat similar names.

The fact that an Air Force employee provided inaccurate information in a telephone conversation did not in any event relieve Selrico of its obligation to submit its bid on time; oral advice from government personnel does not bind the

government and a bidder relies on such advice at its own risk. New Zealand Fence Sys.; Department of the Interior-- Request for Advance Decision, B-257460, Sept. 12, 1994, 73 Comp. Gen. _____, 94-2 CPD ¶ 101. For this reason, we have found unobjectionable an agency's rejection of a late bid notwithstanding the bidder's contention that the only reason it did not send the bid by telecopier, which would have resulted in timely submission, was because an agency employee advised it, inaccurately, that telecopied submissions were not permitted. Radar Devices, Inc., B-249118, Oct. 27, 1992, 92-2 CPD ¶ 287.

Moreover, the erroneous information provided to Selrico was not the sole or paramount cause for the late delivery of the protester's bid. Instead, the actions of the commercial carrier, who was Selrico's agent, significantly contributed to the late delivery; indeed, the carrier's actions were apparently the prime reason for the failure of the bid to arrive on time. Accordingly, the case does not fall within the limited exception to the general rule requiring rejection of late bids.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel