

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

201

FILE: B-186641

DATE: August 4, 1976

MATTER OF: Good Hope Refineries, Inc.

DIGEST:

Late offer submitted by TWX in response to RFP which authorizes telegraphic responses by offerors at their own risk, but furnishes only TWX number without "answer-back" code, may not be considered for award since there was neither Government mishandling after receipt of offer nor improper Government action causing delay in submission. Lateness of offer was due primarily to offeror's waiting until 20 minutes prior to closing time to begin transmitting offer, even though it did not have all information it should have known it needed to transmit successfully.

Good Hope Refineries, Inc. (Good Hope) protests the decision of the Defense Fuel Supply Center (DFSC), Defense Supply Agency (DSA), to regard its offer submitted under request for proposals (RFP) No. DSA600-76-R-0536 for the supply of marine diesel fuel, as a late offer which cannot be considered for award.

The protest arises out of Good Hope's efforts to submit a telegraphic offer. The RFP authorized the submission of telegraphic proposals. It further provided as follows:

"When telegraphic offers are authorized * * * all wire offers dispatched directly from the offeror to the Defense Fuel Supply Center by * * * (TWX) must be transmitted and received in the * * * Center no later than the exact time set for receipt of offers * * * in the solicitation. Any offer submitted by this means which is not completely received by this time shall be treated as late in accordance with the provisions entitled LATE OFFERS AND MODIFICATIONS * * *. Use of the DFSC * * * (TWX) is an authorized convenience to be used at the risk of the offeror. * * *"

The provisions dealing with late offers state:

B-186641

"(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

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"(ii) it was sent by * * * (* * * telegram if authorized), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; * * *."

Good Hope, never having previously responded to an RFP for furnishing fuel to the Defense Department, was in frequent telephone contact with DFSC on the day offers were due. During their final conversation a DFSC official suggested that Good Hope transmit its offer telegraphically and provided Good Hope's representative with the DFSC's TWX number (which was also listed in the RFP). Good Hope asserts that its representative was told "that the number constituted 'all' that was needed for Good Hope to transmit its offer."

At approximately 3:10 p.m., Good Hope's operator began to transmit, but stopped when she realized that she had not been given the "answer-back" code required for transmission. Following an unsuccessful attempt to locate this information in the Western Union Telex/TWX Directory, the operator began transmission at 3:31 p.m. Transmission of Good Hope's offer was completed at 3:41 p.m., eleven minutes after the 3:30 p.m. closing time for receipt of proposals.

The protester contends that its offer should be considered for award because delay in transmission was caused by the incomplete TWX information contained in the RFP and furnished by telephone by DFSC. Good Hope's position is that the DFSC's furnishing incomplete information constituted "mishandling by the Government."

The protester's reliance upon the "mishandling by the Government" exception to the requirement for rejection of late offers is misplaced. It is clear from the provision quoted above that this exception refers only to mishandling "after receipt at the Government installation" and does not encompass situations involving delayed receipt by the Government. See, e.g., Interstate Contractors, B-184388, October 10, 1975, 75-2 CPD 230. Nevertheless, we have held that where the late receipt

of a bid is due to some improper Government action, the bid may be considered for award if to do so would not compromise the integrity of the competitive bid system. Avantek, Incorporated, 55 Comp. Gen. 735 (1976), 76-1 CPD 75; Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176; LeChase Construction Corporation, B-183609, July 1, 1975, 75-2 CPD 5; 48 Comp. Gen. 765 (1969); 34 id. 150 (1954). In all of those cases, however, the "late" bidders acted reasonably and diligently in attempting to have their bids delivered on time. Where bidders have not exercised such reasonable diligence, we have consistently held that a late bid is not entitled to consideration even where the lateness is "substantially caused by erroneous Government actions or advice." Avantek, Incorporated, supra; Associate Control, Research and Analysis, Inc., B-184071, September 25, 1975, 75-2 CPD 186; James L. Ferry and Sons, Inc., B-181612, November 7, 1974, 74-2 CPD 245.

We believe that the late arrival of Good Hope's offer was due primarily to its own lack of diligence. It is the bidder's responsibility to see that its bid is delivered to the proper place by the proper time. Associate Central, Research and Analysis, Inc., supra, and cases cited therein. Here Good Hope attempted to submit its offer by TWX 20 minutes before the closing time, even though the RFP authorized that method of submission only as an alternative to mail or hand delivery and warned that TWX submission would be at the risk of the offeror. With regard to the "answer-back" code, we think Good Hope, as a TWX subscriber, should have known that it would need that code along with DFSC's TWX number, to successfully transmit, and also should have known how to obtain it rapidly. In this connection, the record indicates that the code was readily available both from the Western Union Directory (although Good Hope couldn't find it) and the Western Union computer. In fact, the Directory specifically provides instructions to TWX users on how to obtain "answer-back" codes from the computer when only the TWX number is known. Under these circumstances, we believe that the Government's failure to provide Good Hope with the "answer-back" code did not materially contribute to the late submission; rather, it was Good Hope's waiting until 20 minutes prior to the closing time to start transmitting its offer, particularly when it did not have the information which it should have known it needed in order to transmit, that was the significant cause of the late receipt of its offer.

B-186641

204

In view of the above, Good Hope's offer may not be considered for award. Protest denied.

R. F. K. 114
Deputy Comptroller General
of the United States