Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AABLE Tank Services, Inc.

File: B-273010

Date: November 12, 1996

Emmett Bonfield for the protester.
Daryl L. Streed for Environmental Contractors of Illinois, Inc., an intervenor.
Joshua A. Kranzberg, Esq., and Melinda N. Finucane, Esq., Department of the Army, for the agency.
Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation provided that bids were due at Savanna, Illinois by 2 p.m. local time, but low bidder sent its bid to Letterkenny Army Depot in Pennsylvania--which had issued the solicitation--at the direction of the Letterkenny contract specialist (identified in the solicitation as the person to contact for further information), where the bid was opened at 2 p.m. Letterkenny time (1 hour ahead of Savanna time). Acceptance of the bid was proper, since government misdirection of the bid to Letterkenny was the sole cause of the bid's nonreceipt at Savanna, and acceptance would not compromise the integrity of the competitive system.

DECISION

AABLE Tank Services, Inc. protests the proposed award of a contract to Environmental Contractors of Illinois, Inc. (ECI) under invitation for bids (IFB) No. DAAC67-96-B-0027 issued by the Department of the Army's Letterkenny Army Depot (LEAD) in Chambersburg, Pennsylvania, for the removal and installation of underground fuel storage tanks at the Savanna Army Depot Activity in Savanna, Illinois. AABLE argues that ECI's bid should be rejected because it was not delivered to the address specified in the solicitation.

We deny the protest.

The IFB's cover page (Standard Form 1442) indicated that the solicitation was "issued by" LEAD (item 7); that a vendor should "address offer to" Savanna (item 8); and that bids were due, for public opening, "at the place specified in item 8" by 2 p.m. "local time" on Thursday June 20, 1996 (item 13). According to the Army, the cover page was mistaken in that LEAD normally both issues solicitations and holds bid openings for Savanna procurements expected to exceed $25,000 (Savanna is

a depot activity under LEAD); vendors thus should have been advised to send bids to LEAD by 2 p.m. The contract specialist, located at LEAD and unaware of the IFB error, advised a number of prospective bidders who called for information to send their bids to LEAD, in keeping with normal procedures.

Savanna received six bids on June 20 shortly before noon Central Daylight Time (CDT), which is local Savanna time. The bids had been delivered by commercial carriers, and were forwarded unopened by a Savanna employee to the contracting officer's representative (COR) at Savanna who was to be responsible for the project after award. Meanwhile, the LEAD contract specialist, assuming that bid opening was 2 p.m. Eastern Daylight Time (EDT)--the local LEAD time--accepted and opened two bids in the presence of another LEAD contract specialist. ECI's bid, which had arrived at LEAD via UPS 4 hours early, was the lower of the two opened, at $104,100.

The Savanna COR, upon noting the six bids at his desk, called the LEAD contract specialist at 1:15 p.m. CDT, or 2:15 p.m. LEAD time--15 minutes after the two LEAD bids had been opened--at which time the IFB error finally was noted. Because Savanna bids normally are opened at LEAD, the COR sent the six unopened bids to LEAD the next morning (Friday June 21) via certified priority mail, and they arrived and were opened on June 24. AABLE submitted the lowest of the Savanna bids, $127,530, which was second low overall.

AABLE protests that as the low bidder based on the bids sent to the proper address as designated in the solicitation--Savanna--AABLE is entitled to the contract award. ECI, in commenting on AABLE's protest, states that after receiving the solicitation and noting the different addresses in items 7 and 8 of the cover sheet it called the LEAD contract specialist, whom the IFB identified as the source for further information, in order to verify where the bid was to be mailed. ECI asserts that it was told to send the bid to LEAD, and argues that award to ECI thus is proper as ECI submitted the lowest of all bids received. The Army responds to AABLE's protest as follows:

> ". . . all eight bids submitted in response to the solicitation were received prior to [2:00 p.m.] EDT at LEAD and [1:00 p.m.] CDT at Savanna, so none can be considered late no matter at which location they were received. Once the bids were received, they remained under Government control, and the bidders did not have an opportunity to change their bids. Although the bid opening at LEAD on July [sic] 20 was public, only the contract specialist and another government employee were present at that time. Immediately after the bids were opened, the COR from Savanna called, so the results of the LEAD bid opening were not revealed at that time. It was not until June 24, 1996, after the bids were received from Savanna, that the

remaining bids were opened, and that information about all of the bids was released."

The Army concludes that acceptance of ECI's bid therefore is proper.

As a general rule, the place and time for bid submission is determined by the relevant provision in the IFB itself. In this case, according to the IFB bids clearly were to be submitted to Savanna by 2 p.m. CDT ("local time") on June 20, so that, in our view, any bids submitted elsewhere were sent to the wrong place. The fact that the Army may have considered Savanna to be the wrong place, based on LEAD/Savanna standard operating procedures, does not change the submission groundrules the agency advertised to potential competitors. The issue, then, is whether award to ECI, which timely sent its bid to LEAD in response to the contract specialist's misdirection, instead of award to AABLE, which correctly sent its bid on time to Savanna, is proper.

We believe the issue should be resolved by reference to the rules governing late bids. The reason is that ECI's bid was, in effect, "late" in that it never reached Savanna--a bid can only be timely if it is received at the office designated in the solicitation by the exact time specified for receipt. See Federal Acquisition Regulation (FAR) § 14.304. Reference to late bid rules supports award to ECI.

Bidders generally are responsible for delivering their bids to the proper place at the proper time. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. At the same time, however, the government has the duty to establish procedures for the timely receipt of bids. Select, Inc., B-245820.2, Jan. 3, 1992, 92-1 CPD ¶ 22. Accordingly, one of the fundamental principles underlying the rules for the consideration of late bids is that a bidder who has done all it could and should to fulfill its responsibility should not suffer if the bid did not arrive as required because the government failed in its own responsibility, if otherwise consistent with the integrity of the competitive system. We therefore have held that a late hand-carried bid may be considered for award if to do so would not compromise the competitive system and either the government's "affirmative misdirection" made timely delivery impossible, see Select, Inc., supra, or government mishandling after timely receipt by the agency was the sole or paramount cause for the bid's late receipt at the designated location. See, e.g., Kelton Contracting, Inc., B-262255, Dec. 12, 1995, 95-2 CPD ¶ 254. For other late bids, FAR § 14.304 provides that they may be considered basically if the bidder sent the bid enough in advance so that normal delivery should have resulted in timely receipt at the bid opening location.[1]

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[1]Specifically, a late bid may be considered if the bid (1) was sent by registered or certified mail not later than the fifth calendar day before bid opening; (2) was sent (continued...)

Recognizing the late bid rules' underlying principle as set out above, we long have held that a strict and literal application of the rule that a bid must be at the right place on time in order to be considered should not be used to reject a bid where to do so would contravene the intent and spirit of the competitive system. See, e.g., 42 Comp. Gen. 508 (1963); I&E Constr. Co., Inc., 55 Comp. Gen. 1340 (1976), 76-2 CPD ¶ 139; Saint Louis Truckpointing and Painting Co., Inc., B-212351.2, Nov. 18, 1983, 83-2 CPD ¶ 588. While the late bid regulations are intended to ensure that a late bid will not be considered if there exists any possibility that the late bidder would gain an unfair competitive advantage over other bidders, I&E Constr. Co., Inc., supra, as we stated in Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999, 1003 (1975), 75-1 CPD ¶ 331:

> "The purpose of the rules governing consideration of late bids is to insure for the Government the benefits of the maximum of legitimate competition, not to give one bidder a wholly unmerited advantage over another by over-technical application of the rules."

In our view, the government was the paramount cause of the "late" receipt of ECI's hand-carried bid. We have permitted late hand-carried bids to be considered where the bidder's reasonable reliance on improper delivery instructions by knowledgeable government personnel made it impossible for the bid to be timely delivered to the bid opening location. See, e.g., Scot, Inc., 57 Comp. Gen. 119 (1977), 77-2 CPD ¶ 425; Select, Inc., supra; LeChase Constr. Corp., B-183609, July 1, 1975, 75-2 CPD ¶ 5.[2] Here, ECI asserts that it submitted its bid to LEAD based on direction from the contract specialist, specified in the IFB as the person to provide bidding information--although the Army has not provided direct support of an ECI/contract specialist conversation, ECI's assertion in that regard is consistent with the Army's statement about the contract specialist's advice to prospective bidders.[3] We do not

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[1](...continued)
by mail (or by telegram or facsimile, if authorized) and the late receipt was due solely to government mishandling after receipt at the government installation; (3) was sent by U.S. Postal Service Express Mail Next Day Service not later than 2 working days before bid opening; or (4) was transmitted through an electronic commerce method authorized by the solicitation and was received no later than 1 working day before bid opening.

[2]The Army advises that even if the contract specialist had recognized the error upon receiving ECI's bid, there would not have been enough time to get it to Savanna before 2 p.m. CDT.

[3]ECI actually included both the Savanna and LEAD addresses on its bid envelope,
(continued...)

see how ECI, having received such instruction, could have been expected to send the bid to other than LEAD--in short, we find no fault on ECI's part with respect to the submission of its bid.

We also see no jeopardy to the integrity of the competitive bidding system by award to ECI. The government had custody of ECI's bid well before 2 p.m. Savanna time--even before the protester submitted its bid to Savanna--and in fact opened and exposed it (to two contract specialists) at 1 p.m. Savanna time (after all the bids were in government custody). ECI obviously never had the opportunity to alter its bid after submission to acquire an advantage over other bidders, see Scot, Inc., supra, nor, given the way Savanna and LEAD handled the situation, did the firm have the chance to withdraw the bid before the Savanna bids were opened at LEAD on June 24. We do not see how the system can be considered to be compromised in any way--or AABLE competitively prejudiced--by accepting the earlier-opened (albeit in the wrong place) lower bid.

In sum, the government was the cause of ECI's submission of its bid to LEAD rather than to Savanna, and award to ECI would have no adverse effect on the competitive bidding system. Application of the late bid rules to preclude award to ECI simply because it was not one of the bids received at Savanna on time would, in these circumstances, be illogical.

The protest is denied.

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[3](...continued)
which identified the contents as a sealed bid for the instant solicitation, and on the UPS delivery label, which specified the contents as a sealed bid for Savanna with delivery to LEAD.