



Decision

Matter of: Hub Construction Co., Inc.
File: B-258474
Date: January 19, 1995

Howard T. Harvey for the protester,
Kenneth J. Morgan for Specialty Contractors, Inc., an
interested party.
Jerry W. Aldridge, Department of the Air Force, for the
agency.
Paula A. Williams, Esq., and Susan K. McAuliffe, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Bid sent by United States Postal Service Express Mail only
1 business day before bid opening was properly rejected as
late since bid was received in bid opening room after bid
opening and could not be considered for award under the late
bid rules; bidder did not allow reasonable time to ensure
timely receipt of bid at bid opening location.

DECISION

Hub Construction Co., Inc. protests the rejection of its bid
as late under invitation for bids (IFB) No. FO8620-94-B0046,
issued by the Department of the Air Force for roofing
services. Hub's bid was rejected because it was not
received by the bid opening official until after bid
opening.

We deny the protest.

The solicitation, issued on August 3, 1994, required bids to
be submitted prior to 1:00 p.m. on Friday, September 2, the
time and date set for bid opening. Bidders were instructed
by section L of the IFB to complete and return their bids to
the agency's street address. (Handcarried bids were to be
placed in the bid depository located there.) Item 8 of the
IFB's cover sheet, which reads "Address Offer To," added a
post office box number to the mailing address. Bidders were
directed to indicate on the bid envelope the solicitation

number and the local time and date for bid opening. The IFB incorporated by reference the standard late bid clause, Federal Acquisition Regulation (FAR) § 52.214-7, setting forth the rule of FAR § 14.304-1(a)(3), that:

"[a]ny bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless . . . sent by U.S. Postal Service Express Mail Next Day Service . . . not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids"

The protester addressed its bid package to the designated post office box address and sent its bid package by United States Postal Service (USPS) Express Mail at 4:17 p.m. on Thursday, September 1. The bid package's mailing label indicates that the post office accepted the bid package for delivery by 3:00 p.m. the next day, Friday, September 2. Hub's mailing label contained the correct solicitation number and the time and date of bid opening.

The bid package arrived at the USPS Hurlburt Field post office at 8:10 a.m. on September 2. According to the agency, under its standard daily mail procedures, an employee went to the post office between 10:00 a.m. and 10:15 a.m. to collect all incoming mail from the agency's post office box. The postal clerk informed the employee that the mail was not ready for pickup but that someone would call the installation when the mail was ready.

Bid opening was held, as scheduled, at 1:00 p.m. on September 2. Three bids were opened and recorded on the bid abstract; Hub's bid was not among them. After bid opening, the bid opening official learned that a Hurlburt Field postal employee had called the contracting office at approximately 11:35 a.m., and indicated that an Express Mail package which "may be a bid" was ready for pickup. The Express Mail package, which contained Hub's bid, was picked up from the post office about 1:50 p.m. Because it was received after bid opening, Hub's bid was not opened. The bid was rejected as late by the contracting officer who determined that none of the exceptions for consideration of late bids provided in FAR § 52.214-7 was applicable. Award has been withheld pending resolution of the protest.

Hub maintains that its bid was timely delivered to the place specified in item 8 of the solicitation, i.e., the post office box, more than 4 hours before the 1:00 p.m. bid opening. Hub contends there was sufficient time for agency personnel to pick up and deliver its bid to the bid opening room. The protester alleges that government mishandling during the process of receipt caused its bid to be late;

specifically, Hub contends that agency personnel improperly failed to perform their duties because September 2 had been designated as a "Down Day."

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. It is the bidder's responsibility to ensure timely receipt of its bid, and the bidder must bear responsibility for late delivery unless specific conditions which govern consideration of late bids are met. Id.; Environmental Systematics of Minnesota, Inc., B-247518, Apr. 23, 1992, 92-1 CPD ¶ 388. Since the record shows that Hub mailed its bid package only 1 work day before bid opening, the 2 working day Express Mail rule in FAR § 14.304-1(a)(3) does not apply. Environmental Control Technologies, B-250859, Feb. 23, 1993, 93-1 CPD ¶ 172; Lytton Int'l, Inc., B-246419, Mar. 6, 1992, 92-1 CPD ¶ 265. Bidders must allow a reasonable time for bids to be delivered from the designated point of receipt (in this case, a post office box) to the bid opening room which was the ultimate destination. See Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161.

Contrary to the protester's allegations that government mishandling in the process of receipt of its bid caused the bid to be late, Hub's own actions were the most immediate cause for the late delivery to the bid opening room. The protester, by waiting until the day before bids were due to mail its bid package (by Express Mail for delivery by 3 p.m.

¹The agency explains that September 2 had been designated as a "Down Day" by the Wing Commander for the Hurlburt Field installation, allowing Air Force facilities at that installation to use reduced staffing levels on that day. The agency reports, however, that operating as a "Down Day" did not affect the agency's standard daily mail procedures which were performed as regularly scheduled.

²Where a solicitation provides that offers may be mailed to a post office box, we view that box as an intermediate stop in transit, and not receipt at the government installation, since the ultimate destination of an offer is the place of opening, and, unless otherwise provided, offers are not opened in the post office. Nuaire, Inc., B-221551, Apr. 2, 1986, 86-1 CPD ¶ 314; Retsina Co., B-212471, Aug. 3, 1984, 84-2 CPD ¶ 148. To the extent the protester argues that the use of a post office box was improper, this protest allegation, first raised after bid opening, is untimely. Our Bid Protest Regulations require that a protest alleging an apparent solicitation impropriety such as this must be filed before bid opening in order to be considered timely. 4 C.F.R. § 21.2(a)(1) (1994); Nuaire, Inc., supra.

the next day), assumed the risk that the agency's normal mail delivery procedures would not ensure delivery to the bid opening location prior to the 1:00 p.m. bid opening. We believe Hub failed to act in a manner reasonably calculated to ensure timely receipt of its bid--in fact, USPS only indicated that it would deliver the package by 3:00 p.m. on bid opening day--2 hours after the scheduled 1:00 p.m. bid opening.

While the bid package did arrive at the Hurlburt Field post office approximately 4 hours before bid opening, the risk of late delivery to the bid opening room did not shift to the agency. The record shows that the agency operated under its standard mail delivery procedures, however, when the agency's employee arrived at the post office to collect its morning mail, the mail was not ready for pickup. Although it is not clear why Hub's bid package (which was physically at the post office) was not available for pickup by the agency during its morning mail run, it is undisputed that the agency did attempt to collect its mail in accordance with its routine mail delivery procedures. The record provides no basis for us to question the reasonableness of those procedures. The post office's failure to place the protester's bid in the agency's post office box earlier than it did cannot be considered mishandling by the agency; mishandling by USPS is not within the ambit of government mishandling under the late bid rules. PDP Analytical Services, B-251776.2; et al., Apr. 5, 1993, 93-1 CPD ¶ 294.

Although the agency received a telephone call from the post office approximately 1-1/2 hours prior to bid opening that a package which may contain a bid was ready for pickup, we do not think the agency acted unreasonably in failing to pick up the package (which was not identified to the agency as a bid under the current IFB or a bid subject to a 1:00 p.m. bid opening) prior to the 1:00 p.m. bid opening. The agency had checked its mail earlier in the day and responded to the post office's call within a reasonable time, particularly in light of the time of day of the call and the limited information given by the post office. The agency here did not mishandle the bid; rather, the method which Hub chose to mail its bid (leaving only 1 day for delivery by 3 p.m. the

next day) was the paramount cause for its late receipt by the bid opening official.³ Accordingly, Hub's bid was properly rejected as late.

The protest is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel

³The protesters statement that it had successfully submitted timely bids using this mailing method under previous solicitations is not relevant here.