

Wardell
P.L.I.

DECISION



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

04711

FILE: B-190231

DATE: January 3, 1978

MATTER OF: Dependable Janitorial Service and Supply

DIGEST:

1. Where protester's bid was sent certified mail less than 5 calendar days before bid opening, bid may be considered only if its late receipt can be attributed to mishandling by Government after receipt at Government installation.
2. Protester's allegations, without evidence sufficient to affirmatively support its position (Government mishandling of its bid), are speculative and, therefore, protester has not met burden of proof.
3. Protester's request for review of contracting officer's decision not to (1) exercise an option provision, renewable at sole discretion of Government, or (2) extend contract past scheduled termination date will not be considered by this Office under our Bid Protest Procedures.

Dependable Janitorial Service and Supply (Dependable) protests the rejection of its bid as late by the Federal Aviation Administration (FAA), Western Region, under invitation for bids (IFB) No. WEOO-7-1366, issued on August 17, 1977, for janitorial services at the Oakland Air Radar Traffic Control Center, Fremont, California. No award has been made pending resolution of the instant protest.

The subject IFB was sent to nine prospective firms, including Dependable, the incumbent contractor. Five bids were received at bid opening, with the apparent low bidder being B & B Maintenance Service (B & B). No bid was received from Dependable by 2 p.m. on September 19, 1977, bid opening. The contracting officer, after an inquiry by Dependable concerning bid results, investigated to determine whether or not a bid from Dependable was received by the FAA Mail and Distribution Group. It was not. On the following day, Dependable's bid arrived and was immediately time-stamped. Subsequently, it was determined to be a late bid.

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Dependable alleges that its bid was received 5 hours prior to bid opening and, therefore, was acceptable under any circumstances. In support of this Dependable submits that it contacted the Certified and Registered Mail Inquiry Section of the Los Angeles Postal Service and was told by "a lady named 'Robin'" that its certified package (# 021443) had been delivered and signed for on September 19, 1977, at 9 a.m. Also, Dependable claims that the return receipt for its certified package contains a signature and stamp date that are suspect. Dependable's second ground for protest is that its bid package was "obviously passed over." In other words, there was Government mishandling after receipt of its bid which was the cause of the late receipt. Finally, Dependable contends that there is "some covert action" to eliminate it from any further performance under contract no. DOT-FATQWE-3832. Dependable bases this on the following: (1) the Government did not exercise the 1-year option provision in the contract, which Dependable readily admits is not a requirement, and (2) the Government did not extend the life of the contract for the time needed to complete the preaward survey of B & B; rather, a purchase order was issued to B & B for the month of October at the monthly rate quoted in B & B's bid.

Dependable's bid was sent by certified mail September 15, 1977, which was 4 days prior to bid opening. The contracting officer, under these circumstances, and pursuant to the "Late Bids, Modifications of Bids, or Withdrawal of Bids" clause (FAA P-33 IFB Rev. August 1977) paragraph (a) (1), determined that the bid was late. The clause reads in pertinent part:

"(a) Any bid 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 either:

- (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g. a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or
- (2) It was sent by mail (or 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."

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Furthermore, FAA has submitted with its report Postal Service Form 3883, stamped September 20, 1977, which indicates that Dependable's certified package was picked up at the Post Office on September 20, not September 19 as alleged by Dependable. We note in this connection that Dependable has made allegations but has not presented any acceptable evidence to establish timely receipt of its bid according to the provisions of the IFB. Consequently, Dependable's bid was properly rejected as late under paragraph (a)(1), supra.

With regard to Dependable's second ground, Government mishandling, there has been no showing that the September 20, 1977, receipt was due solely to mishandling by the Government after receipt at the Government installation as required by paragraph (a)(2), supra. Also, Dependable agrees that Superior Mail, the contractor who picks up the mail from the Post Office and delivers it to FAA, had no duty to inquire at the Post Office whether certified mail addressed to the FAA had arrived without first being notified by the Post Office. We concur. See The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21. Thus, Dependable's bid was also properly rejected as late under paragraph (a)(2), supra.

We should note at this point that it is the responsibility of the protester to present evidence sufficient to affirmatively establish its position. Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244. It is not the practice of our Office to conduct investigations, as Dependable requests, pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105. In the absence of probative evidence, we must assume that the protester's allegations are speculative and conclude that the protester has not met its burden of proof. Mission Economic Development Association, supra.

As to Dependable's final contention, "some covert action" directed against it, based on the contracting officer's failure to (1) exercise the contract's option clause and (2) extend the contract until B & B's preaward survey was completed, we once again are faced with mere speculation on the part of Dependable. Additionally, the option clause in Dependable's contract states that:

"The contract may, at the option of the Government, be extended for an additional one-year term * * *."
(Emphasis supplied.)

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As so phrased, exercise of the option would be at the sole discretion and election of the Government. We have pointed out that such options are purely for the interest and benefit of the Government, and a determination thereby that exercise of an option would be contrary to its interests will not be considered by this Office under our Bid Protest Procedures. C. G. Ashe Enterprises, 56 Comp. Gen. 397 (1977), 77-1 CPD 166. The same is true in regard to the contracting officer's decision not to extend the life of Dependable's contract past its scheduled termination date.

Accordingly, Dependable's protest is denied in part and dismissed in part.


Deputy Comptroller General
of the United States