

Phillips

28097

DECISION



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

FILE: B-213257.2, B-213257.3 **DATE:** April 24, 1984

MATTER OF: Cost Brothers, Inc., and
Lori Waterproofing, Inc.

DIGEST:

1. Commercial carrier delivered bid to address designated in invitation for mailed bids. Bid was delivered by contracting agency to address designated for hand-carried bids as well as for receipt of bids, where it arrived prior to bid opening time. However, the bid was not delivered to the bid opening room. The bid was not discovered until after bid opening. Since the bid was received at address designated for receipt of bids prior to bid opening, the bid was properly for consideration.
2. Where the only evidence of timely submission of a bid is a statement by agency employee that he saw bid package in office designated as address for receipt of bids and protesters offer no evidence to refute statement, protesters have not met burden of affirmatively proving their cases.
3. Protester's allegation that awardee does not have the requisite experience to perform contract concerns a matter of responsibility. GAO does not review affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Neither exception has been alleged.

Cost Brothers, Inc. (Cost Brothers), and Lori Waterproofing, Inc. (Lori), protest the award by the Veterans Administration (VA) of a contract under invitation for bids (IFB) No. 646-40-83-0 on the basis that the proposed awardee's bid was late. Also, Lori protests that the

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[Protest of Cost Brothers, Inc. and Lori Waterproofing, Inc. by the Veterans Administration]

proposed awardee does not have the requisite experience to perform the contract.

The protest is denied.

The IFB issued on August 1, 1983, solicited bids for the tuckpointing of buildings Nos. 1 and 7 at the VA Medical Center, Aspinwall Division, Delafield Road, Pittsburgh, Pennsylvania. Bid opening was scheduled for 9:30 a.m., August 31, 1983. Room No. 4, building 32, at the same address, was designated as the bid opening room.

The invitation provided that bids were to be mailed to:

"Chief, Purchase & Contracting Section (90C)
Veterans Administration Medical Center
University Drive 'C'
Pittsburgh, Pennsylvania 15240"

Also, the invitation provided that hand-carried bids were to be delivered to the following address:

"Chief, Purchase & Contracting Section (90C)
VA Medical Center, Aspinwall Division
Delafield Road, Building No. 32
Basement, Room No. 7
Pittsburgh, Pennsylvania 15215"

Bids were opened as scheduled on August 31, 1983, and three bids were received. About an hour after bid opening the contracting officer was notified that another bid had been received by the VA at the University Drive address (the address for mailed bids), but had not been forwarded to the bid opening room, although it had been forwarded to the Aspinwall address. This bid was from Holbrook Waterproofing Company (Holbrook) and had been transmitted to the VA by Federal Express on the previous day, August 30.

The record indicates that after the package arrived at the University Drive address (where all mail for the Medical Center is received since the Aspinwall address is not a recognized Post Office address) it was routinely forwarded to the Aspinwall address. Although the mailroom at University Drive had instructions to either hand-carry Federal Express letters and packages to the Purchase and Contract section at Aspinwall or to place a call to that section to have the Federal Express letters or packages picked up, this was not done. Consequently, it was not until the following morning, August 31, that Holbrook's bid was

delivered to the Aspinwall address where, according to the VA, it should have also received expedited treatment, but did not. After a search, Holbrook's bid was found in the contracting office, which is room No. 7, where hand-carried bids were to be delivered. Holbrook's bid was opened and it was determined that it was the low bid. Cost Brothers and Lori protested on the basis that the Holbrook's bid was late.

While both Cost Brothers and Lori discuss the treatment to be accorded late hand-carried bids as opposed to late mailed bids, we do not feel that it is necessary to deal with this distinction. The crux of this case would appear to be the question of whether or not Holbrook's bid was, in fact, late.

Federal Procurement Regulations (FPR) § 1-2.303-1 (1964 ed.) states, in pertinent part, as follows:

"Bids received at the office designated in the invitation for bids after the exact time set for opening of bids are late bids."

Also, the invitation, at section 8 of the "Instruction to Bidders," states in pertinent part that:

"Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered"

The invitation provided that sealed bids would be received until 9:30 a.m., August 31, 1983, at:

"Chief, Purchase & Contract Section (134C)
V.A. Medical Center No. 646, Aspinwall Div.
Delafield Road, Bldg. No. 32, Basement
Pittsburgh, Pennsylvania 15215"

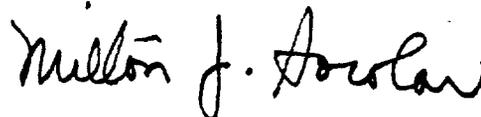
Even though Federal Express did deliver Holbrook's bid to the wrong address, the bid was eventually delivered, prior to bid opening, not only to the place designated for hand-carried bids, room 7, building No. 32, at the Aspinwall Division, but to the place designated in the solicitation for the receipt of bids, Building 32 at the Aspinwall Division. While the record does not indicate the exact time that Holbrook's bid was received at the contracting office, it was time-stamped in at 10 a.m. on August 30, 1983, at the University Drive facility. At least one employee connected with the procurement states that he saw Holbrook's bid, or

the Federal Express package containing Holbrook's bid, in the contracting office prior to bid opening and the contracting officer in his "Determination and Findings" concluded that the bid was actually located in the contracting office at the time of bid opening. While the protesters state the bid was not in the contracting office, neither has introduced any evidence and, under these circumstances, we do not believe they have met the burden to affirmatively prove their case. See Airwest Helicopters, Inc., B-193277, June 7, 1979, 79-1 CPD 402.

Further, it is undisputed that the bid was delivered to the University Drive address by Federal Express almost 24 hours before bid opening. While this was the address for mailed bids, the record indicates that under normal procedures, 24 hours was more than adequate time for mail to move from that location to the contracting office. Therefore, it appears that there was a failure to follow the procedures for delivery of mail from the University Drive address to the proper room at the Aspinwall address and that this constitutes government mishandling in the receipt at the designated government installation and is a basis for consideration of the bid since it was the paramount cause for the late receipt. See Sun International, (B-208146, January 24, 1983, 83-1 CPD 78.

Finally, Lori's allegation that Holbrook does not have the requisite experience to perform the contract concerns a matter of responsibility. Thus, Lori's contention constitutes a protest against VA's affirmative determination of Holbrook's responsibility which is necessarily involved in any decision to award to Holbrook. See Weaver Shipyard & Drydock, Inc., B-210652, February 9, 1983, 83-1 CPD 146 and, Ingersoll Rand, B-204677, November 3, 1981, 81-2 CPD 378. We do not review affirmative determination of responsibility unless either fraud on the part of procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Dixie Bag Corporation, (B-210898.2, July 15, 1983, 83-2 CPD 97. Neither exception has been alleged.

For the above reasons the protest is denied.



Acting Comptroller General
of the United States