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DECISION



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

FILE: B-218375

DATE: June 17, 1985

MATTER OF: E. M. Brown, Inc.

DIGEST:

Where United States Postal Service attempted unsuccessfully to deliver a bid by express mail addressed to a post office box 5 hours prior to bid opening, but agency denies knowledge of attempted delivery and shows it had personnel in its offices at the time of purported delivery and its mail clerk checked its post office box three times prior to bid opening, protester has not carried its burden of proof in showing government mishandling in the receipt of the bid.

E. M. Brown, Inc. (Brown), protests the rejection of its bid as late under solicitation No. SCS-12-PA-85 issued by the Soil Conservation Service (SCS), United States Department of Agriculture.

The protest is denied.

Bid opening was scheduled for 1:30 p.m., March 13, 1985. On March 12, 1985, at 2:50 p.m., Brown mailed its bid by United States Postal Service (USPS) express mail. The bid was mailed to the correct address indicated on the solicitation:

"CONTRACTING OFFICER
USDA, SOIL CONSERVATION SERVICE
228 WALNUT ST., ROOM 850
BOX 985 FEDERAL SQUARE STATION
HARRISBURG, PA 17108-0985"

Bid opening was held as scheduled but Brown's bid was not present. At approximately 7:00 a.m. on March 14, 1985, an express mail package from Brown indicating it contained a bid for solicitation No. SCS-12-PA-85 was picked up at the caller window at the Federal Square Station Post Office. The contracting officer considered the bid late.

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Brown asserts that due to SCS negligence its bid was not received in time for bid opening. Brown points to a USPS receipt showing that delivery was attempted on March 13 at 7:41 a.m., 5 hours prior to bid opening that day. Brown states that a delivery supervisor at the Federal Square Station Post Office verified to Brown the 7:41 a.m. attempted delivery time. Brown states that the supervisor also verified that notice of the express mail was placed in the SCS box prior to 8:00 a.m. on March 13. Brown claims that since SCS personnel erred, all bids for the solicitation should be rejected and the solicitation be readvertised.

SCS has submitted the affidavit of its mail clerk at the SCS office where bid opening was held, which is in the same building as the Federal Square Station Post Office. The clerk states that on March 13, the day of bid opening, he checked P.O. Box 985 at approximately 7:15 a.m., 12:14 p.m. and 12:50 p.m. and did not find an express mail package or notice. He states further that at 12:50 p.m., he also checked the service counter and asked the USPS employee to check particularly for express or certified mail. The mail clerk was informed that all mail had been sorted for that day. On March 14, when the mail clerk went to get the mail at the service window, the USPS employee gave him an express mail envelope from Brown.

A late bid generally must be rejected unless the specific conditions stated in the solicitation for consideration of late bids are met. Jarrett S. Blankenship Co., B-213270, Oct. 25, 1983, 83-2 C.P.D. ¶ 504. The solicitation here contained the standard late bid clause which stated that a late bid would not be considered unless it was received prior to award and (1) it was sent by registered or certified mail at least 5 days prior to bid opening, or (2) the late receipt was due solely to government mishandling after receipt at the government installation. The protester's bid was not sent by registered or certified mail 5 days prior to bid opening. Express mail does not come within the first exception stated in the late bid clause. KOH Management and Computer Systems, Inc., B-208683, Aug. 31, 1982, 82-2 C.P.D. ¶ 197. The second exception also does not apply because the bid was already late when received at the government installation. A post office box is not the government installation for purposes of the late bid clause. The Hoedads, B-185919, July 8, 1976, 76-2 C.P.D. ¶ 21. The protester's late bid, therefore, may not be considered under the terms of the late bid clause. Retsina Co., B-212471, Aug. 3, 1984, 84-2 C.P.D. ¶ 148.

We have recognized, however, that there may be situations not covered under the late bid clause that justify consideration of a late bid. For example, where a protester can show that government mishandling during the process of receipt (as distinguished from mishandling after receipt) was the paramount reason its bid was late, the bid may be considered. Sun International, B-208146, Jan. 24, 1983, 83-1 C.P.D. ¶ 78. Government mishandling of a bid delivered to a post office box may be found where the agency fails to employ procedures designed to permit timely delivery of the bid to the contracting officer within a reasonable time before bid opening. 49 Comp. Gen. 697 (1970). In order to conclude, however, that a bid delivered to a post office box was late solely because of government mishandling, it first must be established that the bid--or at least some notice concerning it--was in the box sometime prior to bid opening. See Utah Geophysical Inc., B-209503, Mar. 22, 1983, 83-1 C.P.D. ¶ 288; Retsina Co., B-212471, supra.

Brown asserts that SCS personnel had notice that its bid was waiting to be picked up while the agency reports no such notice was ever given the agency. SCS has produced an affidavit from its mail clerk to support its position. Brown asserts that the express mail receipt which shows delivery was attempted on March 13 is proof that SCS personnel had notice of the attempted delivery. Where, as here, there is an unreconcilable conflict between a protester and an agency on a factual matter, we can only conclude that the protester has not met its burden of proof to establish the facts it alleges. Elrich Construction Co., Inc., B-212040.3, Oct. 12, 1983, 83-2 C.P.D. ¶ 455.

This case is similar to Control Analysis Corp., B-209611, Apr. 15, 1983, 83-1 C.P.D. ¶ 413, where the USPS attempted to deliver a bid prior to bid opening and was unsuccessful. The notations on the express mail label in that case, as here, only showed the time of attempted delivery but it did not specify the destination. Moreover, the agency in Control Analysis Corporation asserted that its base post office and the location designated for hand carried bids were staffed at the time of the alleged attempted delivery. In this case SCS maintains that not only did its mail clerk check the P.O. box several times and in addition check the service counter, but also that SCS personnel were available in Room 850 or the adjoining room connected by a side door for any attempted delivery made after 7 a.m. on March 13. While in Control Analysis Corporation we noted that the protester's mailing label did not contain the room number and here Brown had included the SCS room number on

its mailing label, we do not find this one dissimilarity requiring a different outcome. Given the entire record, Brown has simply not shown that SCS personnel had notice of the USPS's attempted delivery and indeed, whether the attempted delivery by the USPS was ever made at the correct destination.

The protest is denied.

for Raymond E. Egan
Harry R. Van Cleve
General Counsel