



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Montello Oil Corporation; First Petroleum Corporation
File: B-224191, B-224191.2
Date: December 17, 1986

DIGEST

A hand-carried bid that is received at the bid opening location after the time set for bid opening may not be accepted for award where bidder's failure to follow IFB procedures rather than improper government action, was the paramount cause of the late delivery.

DECISION

Montello Oil Corporation (Montello) and its parent corporation, First Petroleum Corporation (First Petroleum), protest the rejection of their bids submitted in response to invitation for bids (IFB) No. DLA600-86-B-0014 issued by the Defense Logistics Agency (DLA) for fuel. The agency rejected the bids because they were late.

We deny the protest.

The IFB provided that bids would be received at the "Defense Fuel Supply Center (DFSC) in the depository located in building 8, room 8D360 until 1:30 p.m., September 8, 1986." Montello's and First Petroleum's bids were delivered by courier to DFSC on Saturday, September 6, when DFSC was closed. A security guard at building 8 refused to accept the bids and directed the courier to the Officer of the Day in building 3. The Officer of the Day signed for the bids and advised the courier that they would remain on his desk until 9 a.m., Monday morning. The bids had been placed in envelopes properly addressed to DFSC, building 8, room 8D360 and referenced the IFB number and bid opening date and time. On Monday morning, the bids were picked up and distributed through agency mail and arrived at room 8D360 at 1:45 p.m. The contracting officer refused to consider the bids since they were received late.

Montello and First Petroleum argue that DLA erred in rejecting their bids because the bids were late due to government mishandling. The firms maintain that the government must take responsibility for the late delivery of the bids because their courier followed the instruction of DFSC personnel in delivering the bids to the Officer of the Day when denied access to the bid room. In this regard, the protesters point out that both the security guard and the Officer of the Day were made aware of the bid opening place and time and neither suggested that timely delivery was impossible.

In the alternative, the protesters contend that "if there is not a responsible person to accept bids on weekends," bidders should be so advised in the solicitation.

DLA maintains that the bids were properly rejected as late since they were received in the specified bid room after the 1:30 p.m. bid opening time. Concerning the protesters' contention that there was government mishandling, DLA states that neither the security guard nor the Officer of the Day are authorized representatives of the contracting officer for the receipt of bids and that these personnel followed routine procedures for weekend deliveries. The agency concludes that the bids were received late because the protester failed to follow the instructions in the solicitation for submission of hand-carried bids rather than improper government action.

A bidder is responsible for delivering its bid to the proper place at the proper time, and late bids may be considered only as provided in the solicitation. Consolidated Marketing Network, B-217256, Mar. 21, 1985, 85-1 C.P.D. ¶ 330. Although the standard late bid provisions apply only to mailed bids, we have allowed hand-carried bids to be considered where it can be shown that the government's wrongful or improper action was the paramount cause for the late arrival at the designated place and that consideration of the late bid would not otherwise compromise the integrity of the competitive system. Imperial Maintenance, B-218614, July 26, 1985, 85-2 C.P.D. ¶ 94; J.E. Steigerwald Company, Inc., B-218536, Apr. 19, 1985, 85-1 C.P.D. ¶ 453. Wrongful government action in this context can be defined as affirmative government action such as misdirection from government personnel, but the fact that a government employee may have contributed to the lateness in some minor way does

not justify the acceptance of the late hand-carried bid on the grounds of improper government action. Imperial Maintenance, B-218614, supra.

The IFB here specifically advised that all hand delivered bids were to be deposited in the depository in building 8, room 8D360 prior to the time and date set for bid opening and that bids submitted by hand after the time set for receipt would not be accepted. Had the protesters complied with these express IFB terms, their bids would have been timely received. Here, however, after learning that the bid depository was closed on Saturday, the protesters' courier, instead of redelivering the bids on Monday during normal business hours, left the bids with the Officer of the Day. The record indicates that the Officer of the Day had no authority to accept bids or established procedures for delivery of time sensitive documents such as bids to their designated location, and specifically informed the courier that the bid would remain on his desk until Monday morning.

While the protesters contend that the Officer of the Day must be responsible for the receipt of the bids on Saturday since the bid room was closed and DLA provided no alternative bid submission instructions, we do not think that the Officer of the Day's mere presence at the base outside normal business hours reasonably implies that he is an authorized representative of the contracting officer for receiving bids. See Ferrotherm Company, B-203288, Sept. 1, 1981, 81-2 C.P.D. ¶ 194. Nor do we consider the fact that the Officer of the Day followed routine procedures for weekend deliveries by signing for the bids the paramount cause of their late delivery. Once DLA provided explicit directions in the IFB for hand-carried bids, its obligation toward prospective bidders with respect to timely delivery was fulfilled. Imperial Maintenance, B-218614, supra. Thus, under the circumstances here, we consider the protesters' disregard of these express IFB terms to be paramount cause of the late bids.

Further, with regard to the protesters' contention that the solicitation should have advised prospective bidders that "there was not a responsible party to accept bids on week-ends," we find it unreasonable to expect that delivery could be made outside normal business hours. We think that it should have been obvious that the contracting office would

not accept bids on Saturday and that delivery during non-business hours would create the risk of delayed delivery or misdelivery. See Ferrotherm Company, B-203288, supra.

The protest is denied.

Harry R. Van Cleve

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