The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: West Canyon Boiler, Inc.

File: B-232571

Date: December 9, 1988

DIGEST

Government mishandling was not the sole reason for the late receipt of bid received at installation prior to bid opening where bid envelope was not marked with information clearly identifying it as a bid and, as a result, the bid was transported to the bid opening site by the agency's regular mail delivery, rather than by expedited mail delivery; the bid therefore was properly rejected as late.

DECISION

West Canyon Boiler, Inc. (WCB), protests the rejection of its bid as late, and the subsequent award of a contract to Porter Boiler Services, Inc., under invitation for bids (IFB) No. F04693-88-B-0021, issued by the Los Angeles Air Force Base for the replacement of boilers. The protester contends that, but for Air Force mishandling, its low bid, which was received at the installation prior to the bid opening, would not have been received late at the bid opening room.

We deny the protest.

The IFB, issued on July 7, 1988, set bid opening at 2 p.m. on August 8. At the bid opening, the Air Force received four timely bids, not including WCB's; Porter's $127,375 bid was low. At 2:30 p.m., WCB's bid was delivered to the bid opening room through the regular agency mail delivery service. The bid envelope did not identify the package as a bid. The envelope was marked "for delivery at Bldg. 212 before 2 p.m." After investigating the facts surrounding the submission of WCB's bid and determining that it was late, the contracting officer did not open the protester's bid package. WCB protested to the contracting officer on August 19, on the basis that its low bid was delivered by Express Mail to the installation at 12:08 p.m. (although the record shows the agency signed for the package at

044106/137516

12:25 p.m.). The protester contends this was sufficiently before the 2 p.m. bid opening and that under proper mail procedures the bid should have been delivered to the bid opening room by bid opening. The contracting officer denied the protest, concluding that the Air Force did not mishandle WBC's bid. This protest to our Office followed.

The IFB late bid clause (set forth at Federal Acquisition Regulation (FAR) § 52.214-7) provides for consideration of a late bid only where (1) the bid was sent by registered or certified mail at least 5 days before the bid opening date, or (2) the late receipt was due solely to government mishandling after the bid was received at the government installation. Since WCB's bid was sent on August 5 by Express Mail, rather than certified or registered mail, the exception does not apply, and the bid thus may be considered under the clause only if its late receipt was due to Air Force mishandling after its timely receipt at the agency. See Edmonds Electric Co., et al., B-213145, et al., Apr. 24, 1984, 84-1 CPD ¶ 468.

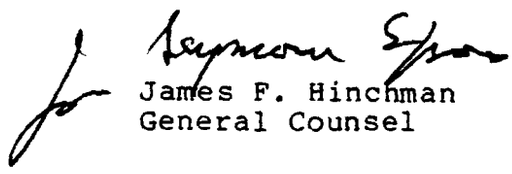
WCB's bid was delivered to the mailroom at 12:25 p.m., and therefore arrived timely at the installation. Contrary to WCB's position, the bid was not mishandled at this point. Rather, the bid was placed in the regular mail delivery system and was delivered to the designated location 2 hours after receipt at the installation. WCB's position is based on its view that delivery of a bid, once received at the installation, should not take 2 hours. The record clearly indicates, however, and the protester does not dispute, that WCB failed to mark its bid envelope as containing a bid. The Air Force asserts, and the record shows, that had the envelope been so marked, the accountable mail clerk would have handled the bid expeditiously, as opposed to following normal delivery procedures, by telephoning the bid opening location and requesting someone there to pick up the package. Thus, the record shows that the paramount cause for the late arrival of the bid at the designated location was the protester's failure to mark the envelope as containing a bid, see Edmonds Electric Co., et al., B-213145, et al., supra, and not government mishandling.

WCB asserts that, even though the bid package was not marked as containing a bid, the Air Force should have examined the contents of the package because, as stated above, it was marked for delivery before 2 p.m., suggesting that it might contain a bid. WCB cites our decision, Robbins Fence Co., B-200987, Apr. 6, 1981, 81-1 CPD ¶ 259, as support for this argument. The facts in Robbins were materially different from those here, however. There, we held that the agency properly considered a late bid where, although the bid

envelope did not identify the contents, it nevertheless was delivered to the designated room several hours prior to bid opening, and the agency agreed it had mishandled the bid by allowing it to sit unexamined for that period of time. The same rationale does not apply where, as in the case of WCB's bid, the unmarked bid package was received in the mail room only approximately 1 1/2 hours prior to bid opening, and the agency handled the package in accordance with its regular procedures. See American McGaw Division, American Hospital Supply Corp., B-217415, Mar. 26, 1985, 85-1 CPD ¶ 351. More fundamentally, we do not consider the reference on a bid envelope to a building and a time sufficient to put mail room personnel--who are not responsible for examining the contents of packages--on notice that the envelope may contain a bid, and thus may require expedited handling. Rather, the burden more fairly rests on the bidder to assure that its bid package is clearly marked as such.

WCB requests recovery of its bid preparation and protest costs. Such costs are not recoverable, however, where, as here, there has been no improper agency action. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988).

The protest and the claim are denied.



James F. Hinchman
General Counsel