



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pearl Properties
File: B-249519
Date: November 9, 1992

Michael J. Reardon for the protester.
Sharon Matthews Swain, Esq., Department of Housing and Urban Development, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Hand-carried bid properly was considered for award where record establishes that it was received in the proper office 3-1/2 hours prior to bid opening and that government mishandling after receipt of the bid was the sole reason why the bid was not delivered to the proper location prior to bid opening.

DECISION

Pearl Properties protests the award of a contract to Fredericksburg Realty under invitation for bids (IFB) No. 10-92-051, issued by the Department of Housing and Urban Development (HUD) for real estate asset management services for single family properties in Virginia. Pearl, the second-low bidder, alleges that Fredericksburg's low bid was late and therefore was improperly considered for award.

We deny the protest.

The solicitation specified that bids were to be submitted by 2 p.m. on April 16, 1992. The solicitation provided that bids should be submitted in sealed envelopes or packages (unless submitted by electronic means) addressed to the office specified in the solicitation and should show the time specified for receipt, the solicitation number, and the name and address of the bidder.

Bid opening was held as scheduled at 2 p.m. on April 16. Nine bids were received and recorded in an abstract of offers. After the opening, the contracting officer returned to her office and discovered Fredericksburg's bid at her desk. After investigating the matter, the agency determined that the bid had been received from a Federal Express

messenger and signed for by a HUD mail clerk earlier that morning at 10:29 a.m. and was placed in the bottom of a receptacle referred to by the agency as a "mail tote." According to HUD, after finding the bid in the mail tote, a mail clerk delivered it to the contracting officer's desk (rather than to the bid opening location), where the contracting officer found it after bid opening had occurred. The agency concluded that the failure to deliver the bid to the appropriate place prior to bid opening prevented Fredericksburg's bid from being included in the 2 p.m. bid opening. The agency made award to Fredericksburg as the lowest responsive, responsible bidder. Pearl's protest to our Office followed.

Pearl contends that the award was improper because, according to the protester, the awardee failed to comply with the bid marking requirements in the solicitation. Pearl also objects to the award because Fredericksburg's bid was not opened at bid opening. According to the protester, "if there is improper government action by failing to empty 'mail totes' in a timely fashion then no contract should be made."

Bidders generally are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid requires its rejection. United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146. A late hand-carried bid may be considered for award, however, where improper government action was the paramount cause of its late delivery and consideration of the late bid would not compromise the integrity of the competitive bid system. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. This exception to the late-bid rule can only be invoked where there is affirmative government action that makes timely delivery of the hand-carried bid to the location identified in the solicitation for receipt of bids impossible and the bidder acted reasonably in fulfilling its responsibility to ensure timely delivery and did not significantly contribute to the lateness. Braceland Bros., Inc., B-248234, Aug. 3, 1992, 92-2 CPD ¶ 69.

We think HUD properly considered the bid submitted by Fredericksburg. The agency's time/date stamp and the Federal Express delivery log that the protester has provided us with both show that HUD received the bid at 10:29 a.m., which was approximately 3-1/2 hours before bid opening. The agency concedes that it mishandled Fredericksburg's bid and that but for this mishandling Fredericksburg's bid would have been at the appropriate location prior to bid opening. While the protester alleges that Fredericksburg failed to properly mark its bid package and that alleged failure was the reason for the mail clerk's late delivery of the bid,

the record does not support these contentions. On the contrary, the record shows that the awardee properly marked its bid in accordance with section L.D.3 of the solicitation (incorporating Federal Acquisition Regulation § 52.214-5); specifically, the bid was submitted in a sealed package addressed to the office specified in the solicitation and it showed the time and date specified for receipt, the solicitation number, and the name and address of the bidder. Thus, we have no basis to conclude that the awardee contributed to the mishandling in any way.

It is clear--contrary to the protester's suggestion--that the integrity of the competitive bid system will not be compromised by acceptance of Fredericksburg's bid. Since it is undisputed that Fredericksburg's bid was exclusively within the agency's control 3-1/2 hours before bid opening, there is no reasonable possibility that the bid was altered after bid opening. See Excel Servs., Inc., B-217184; B-218039, May 8, 1985, 85-1 CPB ¶ 514.

The protest is denied.


James F. Hinchman
General Counsel