



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter Of: Boulder Construction, Inc.

File: B-250671

Date: February 10, 1993

Jerry L. Ray for the protester.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
for the agency.
Jonathan Barker, Esq., and Robert G. Crystal, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest is timely when filed within 10 working days of agency notification that issue of bid timeliness had been decided against protester, even though protest was not filed within 10 working days of earliest indication that bid was not timely.
2. Protest of agency rejection of late bid is denied where protester does not show that it had delivered hand-carried bid before the bid opening.

DECISION

Boulder Construction, Inc., (Boulder), protests the award of a contract by the Bureau of Reclamation, Department of the Interior (Bureau), to Contri Construction Co. for a station domestic water system for the Hoover Dam. The Bureau rejected Boulder's low bid because it determined the bid had been submitted late. The agency also contends that Boulder's protest is untimely.

We deny the protest.

PROTEST TIMELINESS

The Bureau opened bids on solicitation No. 1425-2-SI-30-10190 on September 11, 1992, and awarded the contract to Contri Construction on September 16. On September 13, the Bureau notified Boulder that it had determined that

Boulder's bid was late and that it had awarded the contract to Contri. Boulder filed a protest with this Office on October 1, within 10 working days of September 18.

Our Regulations require that protests be filed not later than 10 working days after "the basis for the protest is known or should have been known." 4 C.F.R. § 21.2(a)(2) (1992).

The Bureau contends that Boulder knew the basis for the protest on September 11, 1992, the day of the bid opening, when the contracting officer advised Boulder that its bid was late. The Bureau maintains, therefore, that Boulder should have filed its protest by September 25 (10 working days after September 11) to be timely. Boulder asserts that it was not advised that the Bureau had determined that its bid was late on September 11, and that the bid opening officer even announced on that date that "the apparent low bidder is Boulder Construction of Las Vegas."

Although the contracting officer may have indicated to Boulder on September 11 that its bid was late, it is clear that the Bureau did not decide the issue until September 16 and did not notify Boulder of the decision until September 18. Until then, the Bureau appeared to be considering whether to accept Boulder's bid, and it was reasonable for Boulder to believe that no basis for a protest existed. Not only did the Bureau open Boulder's bid, it gave Boulder a chance to comment on the issue of timeliness and did not award the contract until September 16, after considering Boulder's comments. On that date (as the Bureau states in a letter of September 22), the Bureau concluded that Boulder's bid was late.

Even if the contracting officer had notified Boulder on September 11 that its bid was late, subsequent agency action led Boulder to reasonably believe that the agency had yet to decide whether the bid was late.

BID TIMELINESS

The first amendment to solicitation No. 1425-2-SI-30-10190 provided that bids were due on September 11, 1992, at 2:00 p.m. The solicitation also provided that hand-carried bids would be received at 400 Railroad Avenue, Boulder City, Nevada. No room number was designated.

The protester and the agency present different versions of when Boulder's representative arrived at 400 Railroad Avenue with the bid. According to Boulder's representative, he entered the building at 400 Railroad Avenue with the bid "just before 2:00," and initially found no person in sight and no indication where to leave bids. Soon he found

someone who directed him down the hallway, where he met the bid opening assistant. He states that the bid opening assistant then went back up the hall and time/date stamped the bid.

According to the Bureau, Boulder's representative did not arrive until after 2:00. The Bureau states that the contracting officer was "positioned in the [office closest to the main entrance] in order to be able to accept any bids as soon as a bidder walked through the door up until 2:00 p.m." After checking the telephone time recording, which reported the time as 2:01 (the Bureau subsequently established that the recorded time was 1 minute ahead of the official bid opening clock so that the time on the bid opening clock was 2:00), she went to the front door to check for anyone approaching the building. She saw no one and returned to her own office. About a minute later, she heard someone in the hall. She then walked into the hallway where she saw three Boulder employees, and informed them that they were late.

The bid opening assistant corroborates the contracting officer's version of events. She said she left her office at 2:00:30 p.m., went to another office to check the bid depository, and then bought a package of gum from a candy machine. She then heard the door to the main entrance slam open as a Boulder employee entered. After taking the bid from the Boulder representative and asking another Bureau employee what to do with the bid, she time/date stamped it.

After reenacting events, the Bureau determined that the versions of both the contracting officer and the bid opening assistant were consistent and that the Boulder representative had entered the building at the earliest at 2:01:30.

The bid was time/date stamped 2:02. However, timely receipt of hand-carried bids need not necessarily be proved only by a time/date stamp or other documentary evidence maintained by the government. In determining when a hand-carried bid was received, we consider all relevant evidence in the record, including statements of employees of both the protester and the agency. International Steel Erectors, B-333238, Feb. 13, 1989, 89-1 CPD ¶ 146; Santa Cruz Construction, Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7.

After considering all evidence in the record, we conclude that Boulder's representative did not arrive at 400 Railroad Avenue until after 2:01 (telephone recorded time). The contracting officer's statement that she checked the entrance for prospective bidders after listening to the telephone time recording at 2:01, and the time reenactment of the bid opening assistant's actions both provide a

reasonable basis to conclude that Boulder did not enter the building until after 2:01.

Boulder asserts that its employee entered 400 Railroad Avenue prior to the time the bids were due, but provides no independent evidence to corroborate its assertion. The Boulder representative does not even state the exact time he entered the building.

Boulder was responsible for submitting its bid by the time the bid opening officer announced that the time for bid opening had arrived. See Hi-Grade Logging, Inc. B-222230, B-222231, June 3, 1986, 86-1 CPD ¶ 514.

A hand-carried bid is deemed submitted when the bidder relinquishes control of the bid. Chestnut Hill Construction, Inc., B-216891, Apr. 18, 1985, 85-1 CPD ¶ 443. The uncontradicted statement of the Bureau is that the bid opening officer announced the bid opening at 2:00 (according to the bid opening clock, which was 2:01 according to the telephone recorded time). Since the Boulder representative reached the entrance of 400 Railroad Avenue after 2:01 (telephone recorded time), he could not have relinquished control of the bid in a timely manner.

We need not consider Boulder's assertion that improper government actions, such as failure to designate a room number in the solicitation and lack of bid delivery instructions at the building, caused the bid to be late because those actions had no bearing on when Boulder's representative arrived at 400 Railroad Avenue.

The protest is denied.

for Seymour Gross
James F. Hinchman
General Counsel