



Comptroller General
of the United States

Washington, D.C. 20548

Decision

307233

Matter of: PDP Analytical Services
File: B-251776.2; B-251778.2; B-251861; B-251862
Date: April 5, 1993

S.R. Pinnapureddy for the protester.
Michael E. Bower, Environmental Protection Agency, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that late bids should be considered because their late receipt was due to government mishandling is denied where paramount cause of late receipt was not government mishandling, but rather bidder's failure to properly address its bid package, as well its failure to allow reasonable time for bids to be delivered from the point of receipt to the location designated for receipt of bids.

DECISION

PDP Analytical Services protests the rejection of its bids as late under invitations for bids (IFB) Nos. D201815R1, D201816R1, D201844R1, and D201845R1, issued by the Environmental Protection Agency (EPA) for chemical analytical services for multi-media, multi-concentration inorganic chemical compounds found in samples taken from hazardous waste sites.¹ The protester contends that government mishandling caused the late receipt of its bids.

We deny the protests.

¹The results of the sample analyses, in the form of analytical data, will be used in EPA's enforcement and remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (1988), which established a "Superfund" for the clean-up of hazardous substances releases.

Bids under the IFBs² were due by 1:00 p.m. on Monday, December 28. The IFBs incorporated the standard "Submission of Bids" clause, which provided that envelopes or packages containing bids must show, among other things, the solicitation numbers and the time specified for receipt of bids. See Federal Acquisition Regulation (FAR) § 52.214-5.

PDP mailed its bids, in one package, by U.S. Postal Service Express Mail at 3:15 p.m. on Saturday, December 26. The protester addressed its bid package to the location specified in the IFB--EPA's Contracts Management Division (CMD) in Research Triangle Park, North Carolina--but used the incorrect zip code. The front of the package did not include any markings to identify it as containing bids; however, the back of the package contained the notations "Sealed Bid," and "Date of opening: Dec. 28, 1992, 1:00 p.m." The Postal Service accepted the package for second-day delivery, which obligated it to deliver the package by 3:00 p.m. on Monday, December 28. The agency reports that U.S. Express Mail, which arrives at the post office at the Raleigh/Durham airport is delivered by courier to the street address indicated; however, by prior agreement between the EPA and the Postal Service, the courier does not attempt to actually deliver to EPA on Saturday or Sunday. Instead, the package is routed to the Research Triangle Park post office, where it is held for pick-up by the agency.

At 11:55 a.m., a little more than an hour before the 1:00 p.m. bid opening, PDP called the contracting specialist and was told that its bids had not yet been received. PDP again called the contracting specialist at 12:30 p.m. and informed her that its bid package had been picked up by EPA from the Research Triangle Park post office. At the 1:00 p.m. bid opening, 91 bids were received in the bid opening room; PDP's were not among these. When the agency rejected PDP's bids as late, PDP filed its protests; the agency has withheld award under any of these solicitations pending resolution of the protests.

PDP contends that the cause for the late receipt of its bids at the bid opening room was mishandling by the government, and that its bids should therefore be considered for award. PDP also argues that the contracting specialist improperly

²The four IFBs, which are the subject of this protest, all require the same chemical analytical services, but differ in delivery terms and minimum requirements. Further, two of the IFBs were set aside for small businesses, while the other two were unrestricted. Separate protests, B-251776 and B-251778, have been filed with our Office challenging certain clauses contained in the unrestricted IFBs; these protests are unrelated to the subject protest.

failed to assist it in getting its bid package from the agency's mail room to the bid opening room.

A bid received in the office designated for the receipt of bids after the time set for bid opening is a late bid. FAR § 14.304-1. It is the responsibility of the bidder to deliver its bid to the proper place at the proper time, and late delivery generally requires that a bid be rejected. See Alpha Tech. Servs., Inc., B-243322; B-243715, July 15, 1991, 91-2 CPD ¶ 56. However, late mailed bids received before award may be considered where it can be determined that the late receipt was due solely to mishandling by the government after receipt at the government installation. FAR § 14.304-1(a)(2); see West End Welding and Fabricating, B-225427, Dec. 31, 1986, 86-2 CPD ¶ 724.³ Mishandling typically occurs when the agency does not have reasonable internal delivery procedures or does not adhere to such procedures. See, e.g., Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506.

The agency here contracts with Transcontinental Enterprises, Inc. (TEI) for mail services, including the pick-up and distribution of mail from the Research Triangle Park post office. Mail picked up from that post office is brought to EPA's mail room for sorting and distribution; the mail room is located in a building 4 miles distant from the building that houses CMD. The agency reports that there are three daily mail runs. First, TEI picks up mail from the post office at 7:00 a.m., sorts it, and begins the mail run at 8:30 a.m. Second, TEI picks up mail from the post office between 11:30 and 11:45 a.m., sorts it, and begins the mail run at 12:30 p.m. Finally, there is a priority mail run for deliveries of U.S. Express Mail, checks, and any other mail delivered by commercial carriers which is in the mail room at 3:15 p.m.

The agency reports that once mail arrives in the mail room, priority items are to be sorted first; special procedures are used for priority mail to be delivered to CMD. In general, priority items are to be included in the next scheduled mail run. However, if the item is designated as a bid with an opening time prior to the next scheduled mail

³In its initial protest, PDP complained that government mishandling during the process of receipt caused its bids to be late; specifically, that the agency's practice of having its priority mail held for pick-up was improper. The agency in its report responded to this issue, and PDP in its comments did not rebut the agency's response. We consider this issue to be abandoned by the protester and will not consider it. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

run, the mail room notifies CMD by telephone or changes delivery stops to try to ensure delivery prior to bid opening. If the priority item does not get included in the next scheduled mail run, CMD is notified by telephone. The agency states that, due to the volume of mail and time constraints, mail room personnel look only at information found on the front of a package to determine whether it is a bid.

The superintendent of window operations at the Research Triangle Park post office attests that while PDP's bid package arrived at that post office on the morning of December 28, it was not available for TEI's 7:00 a.m. pick-up. She further attests that PDP's use of the incorrect zip code may have contributed to the delay in the arrival of its bid package from the post office at the Raleigh/Durham airport. The record shows that TEI picked up PDP's bid package at 11:45 a.m. on December 28. The agency reports that that day, a Monday, was exceptionally busy due to the accumulation of mail over the Christmas holidays; instead of the normal 3 or 4 pieces of priority mail, there were 16 to 20 pieces of priority mail at the post office for the 11:45 a.m. pick-up. In the mail room, the processing, sorting, and logging in of all the priority mail was completed at 12:40 p.m., after the 12:30 p.m. mail run had already begun;⁴ this meant that all remaining priority items were to be included in the priority mail run at 3:15 p.m. While, as discussed above, items designated as bids are normally treated in an expeditious manner, because PDP's bid information was written on the back of its package, the mail room personnel did not notice it. As a result, PDP's package was slated for delivery in the 3:15 p.m. priority mail run. At 2:00 p.m., PDP called the mail room and asked it to deliver its bid package to the bid opening room; it arrived there at 2:30 p.m.

The record here does not show that government mishandling was the paramount cause of the late receipt of PDP's bids. While the bids may have been timely received had EPA's procedure required mail room personnel to look for bid information on the back of packages, it is clear that PDP's own actions were the most immediate cause of the delayed delivery. First, PDP used the incorrect zip code in addressing its bid package. As discussed above, this may have caused the bid package's late delivery to the Research Triangle Park post office.

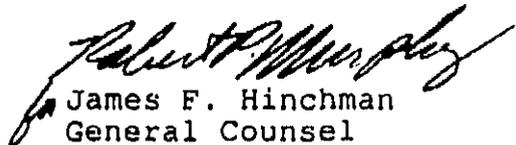
⁴The agency reports that, to accommodate the bid opening at 1:00 p.m. on this day, the mail run schedule was changed to make CMD the first stop, rather than the eighth stop, on the run; bids were delivered to CMD at 12:55 p.m. instead of the normal time of between 1:15 and 1:30 p.m.

Further, bidders must allow a reasonable time for bids to be delivered from the point of receipt to the location designated for receipt of bids; when they do not do so, late arrival at the designated location cannot be attributed to government mishandling. Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161. By waiting until there were no working days left prior to bid opening to mail its bid, PDP accepted the risk that upon arrival the installation's delivery procedures would not guarantee delivery prior to the 1:00 p.m. bid opening on the next business day. Id. In fact, the Postal Service was only obligated to deliver the bid package by 3:00 p.m. on bid opening day.⁵

We conclude that misaddressing and failing to allow a reasonable time for bids to be delivered was the paramount cause for late receipt of PDP's bids. Accordingly, PDP's bids were properly rejected as late.

PDP also argues that the contracting specialist improperly failed to assist it in having its bids delivered to the bid opening room from the mail room. Specifically, PDP complains that the contracting specialist should have given it the telephone number of the mail room so that PDP could call there to expedite delivery of its bid package to the bid opening room. However, there is no duty on the part of an agency to inform a bidder about the arrival of its bid, and a contracting officer's failure to respond to an inquiry about a bid's arrival is therefore not ground for consideration of a late bid. Goodwin Contractors, supra.

The protests are denied.


James F. Hinchman
General Counsel

⁵In its comments on the agency report, PDP complains that the Postal Service erred in marking its bid package for 3:00 p.m. delivery. To the extent that PDP protests that Postal Service mishandling was the paramount cause of delay in receipt of PDP's bids, mishandling by the Postal Service is not within the ambit of government mishandling. See Goodwin Contractors, B-228336, Dec. 17, 1987, 87-2 CPD ¶ 604.