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Proc II



DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-194707

DATE: August 27, 1979

MATTER OF: Unitron Engineering Co., Inc.

DLG 02629

[Protest of Bid Rejection For Lateness]

DIGEST:

Where hand-carried bid was received one day after bid opening because common carrier closed its offices during emergency at nearby nuclear electric power generating plant, contracting officer properly rejected bid as late. Although facts of case are unique, they present no reason to depart from established rule, requiring rejection of late hand-carried bids, which has been applied where other extraordinary circumstances beyond bidder's control have disrupted delivery services.

Unitron Engineering Co., Inc. (Unitron) protests the proposed award of a contract to Superior Steel Door & Trim Co., Inc. (Superior), under invitation for bids (IFB) No. N00104-79-B-0371, issued by the Navy Ships Parts Control Center (Navy), Mechanicsburg, Pa.

DLG 02638

AGC 00238

Bid opening was scheduled for 11:15 a.m., Monday, April 2, 1979 in Mechanicsburg. Unitron delivered its bid envelope to Airborne Freight's Chicago office on the afternoon of Thursday, March 29. The bid arrived at Harrisburg International Airport near the close of the working day on Friday, March 30. It was then transferred to the office of Central Penn Air Services, Inc. (Central Penn), at the airport terminal. From there it was to be delivered to the bid opening site the next work day.

Harrisburg International Airport is located in Middletown, Pa., approximately twenty miles from Mechanicsburg, but only about two miles from the Three Mile Island nuclear power generating facility. As a result of a nuclear emergency at Three Mile

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Island, Central Penn closed its office on the day of bid opening. However, the Ships Parts Control Center observed a normal work day and bids were opened as scheduled. Central Penn did not deliver Unitron's bid until April 3. The Navy later notified Unitron that its hand-carried bid was late and could not be considered under the terms of the late bid provision set forth in the IFB. Unitron contends that either its bid should be considered in spite of its lateness or the solicitation should be canceled and a new IFB issued. The Navy has withheld award of the contract pending our decision.

Unitron appears to concede that the late bid provision set forth in the solicitation precludes consideration of its hand-carried bid. Unitron contends, however, that the late bid provision is out-of-date and that the Government is responsible for not updating it to cover extraordinary circumstances such as nuclear accidents. In this regard, Unitron argues that an exception should be made to the late bid rules because the nuclear accident was "unique". Unitron also contends that the exception to the late bid rules relating to the use of certified or registered mail is unfair and prejudicial to the point of restricting transporting of bid documents to the U. S. Postal Service.

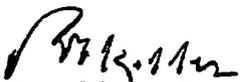
Our bid protest procedures require a protest based upon an alleged impropriety in an invitation for bids to be filed prior to bid opening. 4 C.F.R. § 20.2 (b)(1) (1979). To the extent that Unitron objects to the terms of the solicitation's late bid provision, its protest is untimely and will not be considered, since it was not filed prior to bid opening. However, we will consider the issue of the application of that provision to Unitron's bid.

We understand how in circumstances such as those present here, a bidder may consider as harsh the provision which prohibits consideration of late hand-carried bids. Nevertheless, we believe there is a strong policy reason which favors such a rule. Since bids are opened publicly, allowing consideration of a late bid, even one which is a few minutes late because of unusual circumstances over which the bidder had no control, would lead to apprehension among timely bidders that the late bid was unfairly prepared after bid opening. The maintenance of the integrity and fairness of the procuring process is more important than the loss that a late bidder or the Government suffers from the rejection of a late, low bid. Therefore, we have held that all late bids must be rejected except for those permitted in the exact circumstances provided for in the invitation. Southern Oregon Aggregate, Inc., B-190159, December 16, 1977, 77-2 CPD 477. We have applied this rule even when bids have arrived late under unusual circumstances over which the bidder had no control. For example, we have upheld an agency's refusal to consider a bid that was delivered late because of extreme weather conditions. Hesse Machine & Mfg. Co., Inc., B-193984, February 23, 1979, 79-1 CPD 130. We have also upheld an agency's refusal to consider a bid that was delivered late when the bidder's representative was detained by the presence of a sniper in the area where bids were received. Data Pathing Inc., B-188234, May 5, 1977, 77-1 CPD 311.

The specific circumstances of the present case appear to be unique in that Unitron's bid was delivered late because a common carrier closed its offices during an emergency at a nearby nuclear electric generating plant. Contracting officers do have authority to delay bid openings when unanticipated events indicate that bids "of an important segment of bidders have been delayed in the mails" or cause interruption of "normal governmental processes so that the conduct of bid openings as scheduled is impracticable." Defense Acquisition Regulation

2-402.3 (1976 ed.). The contracting officer reports, however, that mail deliveries were normal and, as stated above, the agency's normal workday was not affected. The contracting officer further advises that five bids were received and that it appears adequate competition was obtained. Under these circumstances, we do not believe that Unitron's bid should be treated any differently from a bid which is delivered late because of some other extraordinary and unforeseen circumstance such as a blizzard.

Since there is no legal requirement that Unitron's late bid be accepted or that the procurement be resolicited as Unitron has requested, the protest is denied.


Deputy Comptroller General
of the United States