

Spiegel



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kentucky Bridge & Dam, Inc.

File: B-240484

Date: November 19, 1990

Gerald M. Woodrox, Esq., for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A bid is late when received 6 days after the time set for opening in a contracting office in Guam, even though it was sent by certified mail at least 5 calendar days before the specified bid opening date, since the certified mail exception to the late bid rule is not applicable where bids are submitted outside the 50 states of the United States, the District of Columbia and Canada.

DECISION

Kentucky Bridge & Dam, Inc. protests the rejection of its bid under invitation for bid (IFB) No. F64133-90-B-0006, issued by the Department of the Air Force at Anderson Air Force Base, Guam, for the provision and installation of lanai windows and screens in 48 military housing units. Kentucky complains that the Air Force improperly rejected its bid as late.

We deny the protest.

Two bids were received by the July 5, 1990, bid opening; Kentucky's bid was not received by that date. On July 6, Kentucky contacted contracting personnel about the bid opening. Contracting personnel informed Kentucky that no bid package had been received from that firm. On July 11, the contracting activity received Kentucky's bid, which had been sent by certified mail and was postmarked June 30. The Air Force declined to open Kentucky's bid which it returned to

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that firm. The contracting officer had determined that the bid was late pursuant to Federal Acquisition Regulation (FAR) § 52.214-32 (FAC 84-53), which was incorporated by reference in the IFB, because the bid had been received after bid opening and there was no provision for accepting it.

On July 19, Kentucky filed this protest with our Office. The protester claims that since its bid package was sent by certified mail 5 days prior to the date specified for bid opening, its bid could be considered under one of the limited exceptions provided for in FAR § 14.304-1(a)(1) to the late bid rule. The agency concedes the protester's bid was sent by certified mail 5 days prior to bid opening, but contends that this exception to the late bid rule does not apply to procurements in Guam and other locations outside of the United States as currently defined in the FAR.


An agency may not consider a late bid unless it falls under one of the limited exceptions to the late bid rules specified in the FAR. Medasys, Inc., B-236740, Sept. 7, 1989, 89-2 CPD ¶ 223; West Canyon Boiler, Inc., B-232571, Dec. 9, 1988, 88-2 CPD ¶ 578. Since 1989, the FAR has had two standard clauses for late submissions and modifications of bids: one for IFBs issued for submission of bids within the United States and Canada, FAR § 52.214-7, and another where bids are submitted "overseas," outside the United States and Canada. See FAR §§ 14.201-6(c)(3), (4) (FAC 84-58). One of the changes that was made in 1989 for IFBs providing for the submission of bids outside of the United States or Canada was the removal of the certified mail exception to the late bid rule. While this exception continues in IFBs where bids are submitted in the United States or Canada, this exception was not in FAR § 52.214-32, which was expressly incorporated in the IFB at issue here.^{1/}

Kentucky asserts that notwithstanding the inclusion of the overseas late bid provision in the IFB, the certified mail exception should be applied because Guam is part of the United States. However, FAR § 2.101 (FAC 84-53) defines the geographical "United States" to mean "the 50 States and the District of Columbia"; and distinguishes, "Possessions," which term includes Guam. Kentucky contends that it is not clear this definition of the "United States" is the one applicable to the late bid clauses. However, FAR § 2.101 states that the defined terms are applicable to all provisions of the FAR

^{1/} The only exception to the late bid rule remaining in this clause is where "it was determined by the government that the late receipt was due solely to mishandling by the government." FAR § 52.214-32(a). Kentucky does not claim this exception applies.

unless the context in which they are used requires a different meaning. Nothing in the FAR provisions concerning late bids implies that the term "United States" means anything other than as defined in FAR § 2.101. Indeed, Kentucky was expressly advised of the applicable rules by the inclusion of the overseas late bid clause in the IFB.

The protest is denied.



for
James F. Hinchman
General Counsel