



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Environmental Control Technologies

File: B-250859

Date: February 23, 1993

Richard B. Taylor, Esq., Conliffe, Sandmann & Sullivan, for the protester.
Captain Gerald P. Kohns, Department of the Army, for the agency.
John Neumann, and William T. Woods, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid sent by U.S. Postal Service Express Mail 1 day prior to bid opening that arrived at the U.S. Post Office for the government installation 40 minutes before bid opening, but, as a result of the installation's normal mail delivery procedures, did not arrive at the place designated in the solicitation for receipt of bids until after bid opening, was properly rejected as late where the late receipt was not the result of government mishandling.

DECISION

Environmental Control Technologies (ECT) protests the Army's rejection of its bid as late under invitation for bids No. DAKF27-92-B-0105. The procurement is for the identification of lead contamination in family housing quarters at Fort Meade, Maryland. The protester contends that the bid was not late because it was properly addressed and arrived at the Fort Meade Post Office before bid opening. Even if the bid was late, argues the protester, the lateness was due to government mishandling. ECT also contends that the government's failure to provide an amendment in a timely manner created the circumstances that resulted in the last minute delivery of the bid. We deny the protest.

The solicitation required that bids be received in the Directorate of Contracting, Building P-2234, at Fort Meade by 3:00 p.m., Friday, September 25, 1992. ECT submitted its properly addressed bid package to the U.S. Postal Service (USPS), Lexington, Kentucky, for Express Mail delivery at 1:53 p.m. on Thursday, September 24. The bid arrived at the Fort Meade Post Office on September 25 at 2:20 p.m. In accordance with usual procedure, a postal service employee

called the Fort Meade Mail and Distribution Center and advised that an Express Mail package addressed to the Directorate of Contracting had arrived. Although the outside of the mailing envelope indicated that it contained a bid for a scheduled 3:00 p.m. bid opening, there is no indication that the USPS employee communicated that information to the Distribution Center. After receipt of the phone call, a Distribution Center employee notified the Directorate of Contracting that a package had arrived at the post office and then drove to the post office to make his usual 3:00 p.m. run. He signed for the package at 3:15 p.m. and returned it to the Mail and Distribution Center. A clerk from the Directorate of Contracting routinely picks up mail from the Distribution Center twice daily, at 10:00 a.m. and at 1:45 p.m. Because the last mail pick up for the day already had been completed, no one from the Directorate of Contracting picked up the bid package until 10:00 a.m. on Monday, September 28. The bid was received by the Directorate at 10:55 a.m. on September 28, well after the bid opening. Consequently, the bid was rejected as late. The agency had received 16 timely bids.

ECT contends that the bid was not late because it was properly addressed to the office designated in the invitation for bids and was received at the specified location prior to the deadline. ECT also contends that if the bid is considered late, then the lateness was due to government mishandling of the bid package after it was received at the government installation.

It is the bidder's responsibility to deliver its bid to the proper place at the proper time. Environmental Systematics of Minnesota, Inc., B-247518, Apr. 23, 1992, 92-1 CPD ¶ 388. Bidders must allow a reasonable time for bids to be delivered from the point of receipt at the government installation to the location designated for the receipt of bids. Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161. Generally, bids received in the office designated in the invitation for bids after the exact time set for bid opening are late bids. Federal Acquisition Regulation (FAR) § 14.304-1. A late mailed bid may be accepted, however, if it was sent by USPS Express Mail at least 2 working days prior to the day of bid opening, FAR § 14.304-1(a)(3), or if the late receipt was due solely to the mishandling by the government after receipt at the government installation. FAR § 14.304-1(a)(2). Mishandling occurs when an agency does not have or does not adhere to reasonable internal delivery procedures. Lytton International, Inc., B-246419, Mar. 6, 1992, 92-1 CPD ¶ 265.

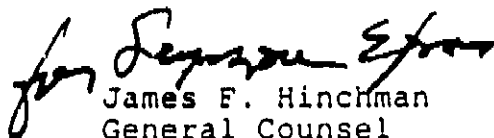
Here, we find that ECT's bid was indeed late. The record shows that although ECT's bid arrived at the USPS Post Office at Fort Meade 40 minutes prior to bid opening, the

bid was not received at the Directorate of Contracting--the office designated in the solicitation--by the 3:00 p.m. deadline. Because the bid was mailed only 1 day prior to the bid opening, the 2-day Express Mail rule in FAR § 14.304-1(a)(3) does not apply.

We find no merit to the protester's contention that the lateness of its bid was due to government mishandling. The protester believes its bid was mishandled because it was not delivered to the Directorate of Contracting until 3 days after bid opening and because no one from the Directorate attempted to retrieve the bid package from the post office after receiving notice that it had arrived there. The record shows, however, that by the time the bid came into possession of the agency--Friday at 3:15 p.m.--the bid was already late for the 3:00 p.m. bid opening. Therefore, the lateness was not the result of any subsequent failure on the part of the agency to deliver the bid package to the Directorate of Contracting until Monday morning. Any mishandling by the USPS prior to receipt of the bid by the procuring agency is not attributable to the agency under the late bid rules. Machine Research Co., Inc., B-230188, Mar. 2, 1988, 88-1 CPD ¶ 224. Further, there is no indication in the record that personnel from either the Mail and Distribution Center or the Directorate of Contracting were aware that the package at the post office contained a bid for a 3:00 p.m. bid opening. There is also no basis for us to conclude that even if extraordinary steps to retrieve the bid had been taken, the bid would have arrived at the Directorate in time. The record shows that the agency had reasonable internal delivery procedures in effect and that these procedures were followed.

Finally, ECT contends that the agency's failure to provide an amendment to the solicitation in a timely manner caused ECT to mail its bid only 1 day prior to the bid opening. If ECT believed that there was insufficient time to submit its bid following receipt of the amendment, it should have filed a protest prior to bid opening. T & A Painting, Inc., B-236847, September 12, 1989, 89-2 CPD ¶ 231.

The protest is denied.


James F. Hinchman
General Counsel