



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Roy McGinnis & Co., Inc.

File: B-275988

Date: April 28, 1997

Theodore M. Bailey, Esq., for the protester.

Barbara Bear, Esq., and Albert C. Proctor, Esq., Department of the Army, for the agency.

Christina Sklarew, Esq., John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that late bid should be considered because its 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 allow reasonable time for bid to be delivered from the receiving fax machine to the location designated for bid opening.

DECISION

Roy McGinnis & Co., Inc. protests the Department of the Army's rejection of its bid modification as late under invitation for bids (IFB) No. DACA63-97-B-0003.

McGinnis alleges that its bid modification, which was transmitted by facsimile, reached the agency prior to the time established in the solicitation for bid opening, and that its rejection was therefore improper. We deny the protest.

The IFB was issued on October 24, 1996, for construction and renovation services to alter classrooms, kitchen laboratories, and other portions of two designated buildings. The IFB included Federal Acquisition Regulation (FAR) clause 52.214-31, permitting bids and bid modifications to be submitted by facsimile; the solicitation specified 817/978-3166 as the fax equipment dedicated to receiving such documents. The IFB provided the bid opening location, listing a street address and room number, and established that bids would be opened at 2 p.m. on December 17, 1996.

McGinnis submitted a bid without prices on December 3, and attempted to add this information to its bid by faxing a completed bid schedule as a bid modification on December 17. The record shows that McGinnis transmitted one copy of its modification to the designated fax number and another copy to a fax machine provided by the agency as an alternate number under previous solicitations. The machine-generated fax receipt log for the designated machine shows that McGinnis

began transmitting its 5-page modification at 1:58 p.m. on December 17, and that the transmission took 1 minute and 55 seconds. The designated fax machine was located in a room adjacent to the bid opening room. When the fax arrived, 5 seconds before the scheduled bid opening, the clerk stationed at the machine followed the agency's established procedure of recording the bidder's name, the solicitation number, time and date removed from the fax machine, and the clerk's initials on an envelope, enclosing and sealing the fax in the envelope, and then delivering the envelope to the bid opening room by hand. The clerk noted the time of receipt on the envelope as 2:03 p.m. When she delivered the bid to the bid opening officer, bid opening had begun and the bid was rejected as late.

The transmission record for the unofficial fax machine (which was located approximately 120 feet away from the bid opening room) shows that McGinnis began transmitting the second copy of its modification at 1:59 p.m. Since this transmission also took 1 minute, 55 seconds, it arrived after the 2 p.m. bid opening time; it was delivered to the bid opening room at 2:20 p.m.¹

McGinnis protests that the modification that was faxed to the designated machine did, in fact, arrive before the 2 p.m. deadline and that it therefore should not have been rejected as late. McGinnis argues that the clerk must have made a mistake in noting the arrival time as 2:03 p.m., since the machine's transmission record shows the fax's arrival time as 1:58:55. The protester argues that once its modification was received by the designated fax machine prior to 2 p.m., as evidenced by the fax machine log, "any subsequent failure of delivery is due solely to government mishandling."

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. PDP Analytical Servs., B-251776.2 et al., Apr. 5, 1993, 93-1 CPD ¶ 294 at 3. However, a late bid can be considered for award if government mishandling after timely receipt at the agency was the paramount cause for its late receipt in the bid opening room, and consideration of the late bid would not compromise the integrity of the procurement process. Butt Const. Co., Inc., B-258507, Jan. 30, 1995, 95-1 CPD 45 at 3; John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419 at 2. 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 at 2-3.

¹Although McGinnis's protest includes arguments concerning the agency's duty to accept a bid or modification faxed to this "unofficial" number, we will not consider these arguments, since the modification faxed to the alternate number was late and could not be accepted for that reason.

The record here does not show that government mishandling was the paramount cause of the late receipt of McGinnis's bid. 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 at 2-3. Here, we think McGinnis's failure to allow sufficient time for its faxed bid to reach the bid opening room by the 2 p.m. deadline was the paramount cause of its lateness. McGinnis appears to confuse arrival at the fax machine with arrival in the bid opening room. Although the record shows that McGinnis's modification arrived at the fax machine 5 seconds before the deadline, this did not allow enough time for the clerk to follow the agency's establish procedures including reviewing the fax for its contents, marking relevant information on an envelope, placing the fax in the envelope, sealing the envelope and delivering it to the bid opening room. deadline. In order to be considered timely, a bid must be received in the office designated for the receipt of bids, i.e., the bid opening room, by the time set for bid opening. See PDP Analytical Servs., supra at 3. Since McGinnis's bid did not reach the bid opening room by the bid opening time, it was late. In addition, we conclude that the agency followed reasonable internal delivery procedures in delivering the bid from the designated fax machine to the bid opening room and did not cause its late arrival and, we have no legal basis to object to the agency's rejection of the bid as late.

The protest is denied.

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