



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Denny's Rock & Driveway

File: B-278597

Date: January 23, 1998

William V. Baumgartner, Esq., for the protester.

James L. Weiner, Esq., Department of the Interior, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid sent via United States Postal Service Express Mail only 1 business day before bid opening was properly rejected as late where it was received at the agency installation after bid opening as a result of the protester's actions.

DECISION

Denny's Rock & Driveway protests the rejection of its bid as late under invitation for bids (IFB) No. 1448-98695-97-B505, issued by the United States Department of the Interior, United States Fish and Wildlife Service for certain dike repairs. The protester's bid was rejected because it was not received by the agency until after bid opening.

We deny the protest.

The solicitation, as amended, instructed bidders that bids were due by 2 p.m. on October 15, 1997, and that bid envelopes should be marked to show the bidder's name and address, the solicitation number, and the time specified for receipt. The IFB included the late bid clause, Federal Acquisition Regulation (FAR) § 52.214-7(a), which provides, in relevant part, as follows:

Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless . . . sent by U.S. Postal Service Express Mail Next Day Service . . . not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of bids.

The protester addressed its bid package to the office designated for "handcarry/overnight" bids and sent the package via United States Postal Service Express Mail at 6:25 p.m. on October 14, the day before the bid was due. The bid package mailing label, which does not indicate a solicitation number or the time and date of bid opening, shows that the post office accepted the bid package for delivery by 12 p.m. the next day. The postal carrier's uncontroverted explanation of what subsequently transpired is that he attempted to deliver the package twice on October 15, at 11:30 a.m. and 4:30 p.m., but both times failed to complete delivery because the installation's mail room door was locked. The agency agrees that the mail room door was locked at 11:30 a.m. because of the mail room workers' regularly scheduled lunch hour. The carrier further explains that he did not go to the installation's main entrance where security guards were situated, because, from past experience, he knew that the guards would not sign for express mail, and would not allow him to wander through the building.

The contracting officer reports that on the morning of bid opening, he went to the mail room and notified the mail room personnel and the main entrance security personnel of the upcoming bid opening location and time. He states that he had several physical checks made at the mail room prior to the bid opening date and several times on the bid opening date. Bid opening was held, as scheduled, at 2 p.m. on October 15. Four bids were received and recorded on the bid abstract; the protester's bid was not among them. The protester's bid was eventually delivered to the agency at 11 a.m. on October 16. Because it was received after bid opening, the bid was not opened and was rejected as late by the contracting officer, who determined that none of the exceptions for consideration of late bids set forth in FAR § 14.304-1(a) was applicable.

The protester maintains that it did everything possible to ensure that its bid would be delivered timely to the place specified in the solicitation. The protester states that it sent the document via overnight-express mail addressed in accordance with the solicitation instructions, and contends that the attempted delivery to the designated office before the time that bids were due was thwarted because agency employees "wrongfully closed their office during business hours." The protester argues that this constitutes government mishandling during the process of receipt which caused Denny's bid to be late.

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 bidder's responsibility to ensure timely receipt of its bid, and the bidder must bear responsibility for late delivery unless specific conditions which govern consideration of late bids are met. Id., Environmental Systematics of Minn., Inc., B-247518, Apr. 23, 1992, 92-1 CPD ¶ 388 at 2. Since the record shows that Denny's mailed its bid package only 1 working day before bid opening, the above-quoted 2 working day Express Mail exception does not apply. Environmental Control Techs., B-250859, Feb. 23, 1993, 93-1 CPD ¶ 172 at 2-3; FAR § 14.304-1(a)(3).

As for the protester's allegation that the government mishandled the bid by closing the mail room for lunch only hours prior to the bid deadline, the "government mishandling" exception at FAR § 14.304-1(a)(2) only applies if a government impropriety after receipt at the government installation was the sole or paramount reason for the late receipt. See Secure Applications, Inc., B-261885, Oct. 26, 1995, 95-2 CPD ¶ 190. Here, the contracting officer alerted both the mail room personnel and the main entrance security guards of possible incoming bids and had periodic physical checks of the mail room made for incoming bids. The agency did not receive the bid prior to bid opening at the government installation, and the protester's own actions were the most immediate cause of the late delivery. By waiting until the day before bids were due to mail its bid package, the protester assumed the risk that delivery to the bid opening location would not occur prior to the 2 p.m. bid opening.

The protester's contention that the installation was "wrongfully closed" when delivery was attempted is factually misplaced. It is clear from the record that the installation was open and accessible via the main entrance at 11:30 a.m. when the postal carrier arrived, prior to the bid opening, and found the mail room door locked. Thereupon, the postal carrier did not deliver the bid package (which Denny's had failed to identify as a bid), electing not to attempt delivery via the main entrance to the installation. The postal carrier's failure to take available steps to ensure timely delivery does not constitute government mishandling under the late bid rules. Goodwin Contractors, B-228336, Dec. 17, 1987, 87-2 CPD ¶ 604 at 5. In short, there was no government mishandling; the protester's own actions, which include those of his delivery carrier, were the paramount cause for the late receipt of his bid, and the bid was properly rejected as late.

The protest is denied.

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