

July 16, 1993

P.S. Protest No. 93-11

PHYLLIS WILSON

Solicitation No. 632-112-93

DIGEST

Protest against failure to consider late bid is dismissed where protest was submitted more than ten working days after protester was notified of bid's late receipt.

DECISION

Ms. Phyllis Wilson protests the contracting officer's failure to consider her late bid in response to solicitation 632-112-93 for highway mail transportation service.

The solicitation was issued May 6, 1993, by the Midwest Area Office, Distribution Networks, Hazelwood, MO, seeking bids for box delivery service between the termini of Edgar Springs and Beulah, MO. Bids were to be opened at 3 p.m., June 7.¹ The solicitation included PS Form 7469, Highway or Domestic Water Transportation Contract Information and Instructions, July 1992, which includes the following:

I. Instructions

* * *

C. Late Offers, Modifications, and Withdrawals

¹ As issued, the solicitation called for bids to be received on May 7; this was corrected by Amendment 1 issued May 14.

1. Offers . . . received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless they are received before award is made and . . . either

a. they were sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt,

b. * * *

or

c. they were sent by mail . . . or delivered by other means to the precise depository prescribed in the solicitation and it is determined by the Contracting Officer that the late receipt was due solely to mishandling after receipt by the office designated to receive offers.

Ms. Wilson mailed her bid by certified mail June 3 at the Edgar Springs, MO, post office. The bid was received by Distribution Networks on June 8. Because the bid had been received after the June 7 date for bid opening and the contracting officer concluded that none of the conditions which would allow its consideration applied to it, the bid was held, unopened, until award was made under the solicitation, at which time Wilson's the bid was returned to Ms. Wilson. Ms. Wilson was advised by letter dated June 8 and by a telephone conversation on June 9 that her bid had been received late. After award was made on June 23, Ms. bid was returned to her.

Ms. Wilson's protest, dated June 21, was received by this office June 25. The protest complains about the delay in the receipt of the bid, noting that there was a three-day delivery standard for First-Class Mail between Edgar Springs and Hazelwood, and that other certified mail between those points was more timely delivered. Ms. Wilson also notes that she had been the driver under the previous contract, that she recently purchased a new truck to serve the route, that it would be a hardship for her if she did not receive the contract, that the annual rate of her bid, \$11,499, is substantially less than the amount of the bid on which award was made, and that she believes that she is being discriminated against.

The contracting officer's statement explains that the previous contract on which Ms. Wilson was the driver was not renewed because the contractor no longer met the residency requirement of the contract. Further, the statement recites the circumstances concerning the late receipt of Ms. Wilson's bid, noting that although the bid was sent by certified mail, it was not eligible for consideration because it was mailed only four days before the June 7 bid opening date. The statement denies any impropriety in the process or intention to discriminate against Ms. Wilson.

Ms. Wilson has submitted comments on the contracting officer's report which contend that delays in mail delivery should be considered the same as delays caused by mishandling after receipt; inquire how the five calendar day requirement is calculated; note that the record does not reflect the procuring office's inquiry to the Hazelwood post office for bids arriving after the morning delivery on June 7;² complain that her bid package was not returned until June 30, several days after the June 23 award date; assert that she was advised that "[she] had to wait until the bid was awarded before [she] could make a protest," noting that she had "called the Postal Service legal department on June 8"; and assert that an individual in Distribution Networks "had already made up his mind I wouldn't get this award," citing as evidence the timely arrival of another bid, mailed June 7 from Rolla, MO, which "left on the same truck" as Ms. Wilson's bid, mailed from Edgar Springs.

² The contracting officer's report includes a memorandum to the record reflecting a conversation between Ms. Wilson and the contracting officer in which the contracting officer advised that "[o]r normal procedure on bid opening day is to call the Hazelwood Post Office between 1400 - 1430 to obtain bids which may have arrived after all the morning box mail was delivered to this office."

DISCUSSION

There is an initial question of the timeliness of the protest.³ Contrary to the advice which the protester asserts she was given, there is no requirement that a protest of this nature be postponed until contract award. To the contrary, our protest regulation requires that such a protest "must be received not later than ten working days after the information on which [it is] based is known or should have been known." Procurement Manual (PM) 4.5.4 d. In this case, Ms. Wilson was advised of the late receipt of her bid not later than the June 9 telephone conversation recited above. Accordingly, her protest, received twelve working days after June 9, is untimely. *Holmes Construction Co., Inc.*, P.S. Protest No. 92-02, February 25, 1992.⁴

The protest is dismissed.

William J. Jones
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Contract Protests and Policies

³ We may consider timeliness *sua sponte* even though no party to the protest has raised the issue. *Coopers & Lybrand*, P.S. Protest No. 89-91, March 21, 1990.

⁴ Were we to reach the merits of the protest, application of our precedents would require us to conclude that it is the bidder's responsibility to assure the timely arrival of a bid, and that the restrictions concerning the consideration of late bids must be strictly enforced to maintain confidence in the integrity of the competitive bidding system, *Spaw-Glass Construction, Inc.*, P.S. Protest No. 87-46, September 18, 1987; that Ms. Wilson's bid, sent by certified mail, could have been considered only if sent under the circumstances allowed by the solicitation (*i.e.*, at least five working days before the bid opening), *R.S. Owens & Co.*, P.S. Protest No. 85-65, September 24, 1985; that the bid was sent only four working days before the bid opening, and thus was not eligible for consideration, *Arthur D. Berry*, P.S. Protest No. 90-56, November 27, 1990; and that the protester, who has the burden of affirmatively proving her case, *Marino Construction Company, Petroleum Equipment, Inc.*, P.S. Protest Nos. 83-33 and 83-35, August 16, 1983, has not established any impropriety in the manner in which contracting personnel dealt with her late bid.