

Protest of) Date: June 22, 1987
H.A. DORSTEN, INC.)
Solicitation No. 209986-87-A-0025) P.S. Protest No. 87-42

DECISION

H. A. Dorsten Inc., (Dorsten) timely protests the failure of the contracting officer to consider its bid for construction of a post office under Invitation For Bid (IFB) No. 209986-87-A-0025. The bid was determined to be late and not to fall within any of the established criteria for the consideration of late bids

IFB No. 209986-87-A-0025, issued January 16, 1987, by the Facilities Service Office, Louisville, KY, sought bids for construction of a post office in Dayton, Ohio. As issued, the solicitation indicated that bids were to be opened April 29 at 2:00 P.M. Seven amendments to the solicitation were issued. Amendment No. 6 extended the bid opening to April 29 at 3:00 P.M. Amendment No. 7 transmitted new Davis-Bacon wage rates applicable to the project and indicated the bid opening time as April 29 at 2:00 P.M. Amendment No. 7 was never mailed to Dorsten. The contracting officer states that the architect handling the project inadvertently used an old mailing list which did not include Dorsten because Dorsten obtained its bid package after the issuance of amendments one through six. When Dorsten attempted to deliver its bid by hand after 2:00 P.M. but before 3:00 P.M. on the day of bid opening, after the other bids had been opened, it's bid was rejected on the basis that the bid was not submitted by the bid required 2:00 P.M. deadline. This protest followed on May 1.

Discussion

The circumstances of this case are governed by PCM 2-303.2, Late Offers, Modifications, and Withdrawals. That section provides, in pertinent part:

(a) Offers and modifications of offers or withdrawals thereof 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, except for withdrawals under negotiated solicitations, either:

(i) they were sent by registered or certified mail not later than the fifth

calendar day prior to the date specified for receipt,

(ii) they were sent by Express Mail service (post office to addressee) not later than the second calendar day (excluding Saturdays, Sundays, and Federal Holidays) prior to the date specified for receipt, or

(iii) they were sent by mail (or telegram if authorized), or delivered by other means to the precise depository prescribed in the solicitation, and it is determined by the Head of Procuring Activity that the late receipt was due solely to mishandling after receipt by the office designated to receive offers.

We find that there is no basis on which this office can consider Dorsten's bid. Dorsten's bid does not fall within one of the above three exceptions, and, therefore, PCM 2-303.2 precludes consideration of its bid. See Superior Cable Construction, Inc., P.S. Protest No. 85-15, June 13, 1985; Martin J. Jaska, Inc., P.S. Protest No. 79-36, August 16, 1979. Because Dorsten's bid was hand delivered to the procuring office, provisions (a) (i) (registered or certified mail) and (a) (ii) (Express Mail) are inapplicable. Subsection (a) (iii) is inapplicable since there is no suggestion that late receipt was due to any mishandling after receipt by the office designated to receive offers. Thus, the record fails to show that the bid was delivered in a manner which would allow its consideration.

Even if the bid could be considered, Dorsten's failure to acknowledge receipt of Amendment No. 7, whether the amendment was received or not, would make its bid nonresponsive. Our decisions have established that a bidder's failure to acknowledge a material amendment resulting from its nonreceipt and the nonreceipt is not the result of a conscious and deliberate attempt to preclude the bidder from participating in the competition, preclude the consideration of its nonresponsive bid. The bidder bears the risk of non-receipt of an amendment. Aleman Roofing Company, P. S. Protest No. 84-74, December 24, 1984; accord AAMCO Transmission, P. S. Protest No. 80-24, October 30, 1980.

A modification to the applicable wage rate determination is a material amendment,^{1/} and Dorsten has presented no evidence that its failure to receive Amendment No. 7 was the result of a deliberate attempt by the Facilities Service Office to exclude Dorsten from the competition. See Hempel's Marine Paints, Inc., Comp. Gen. slip opinion B-211846, June 21, 1983.

The protest is denied.

^{1/} AAMCO Transmission, supra; Postal Data Corp., P.S. Protest No. 78-50, November 15, 1978; accord Fast Electrical Contractors Comp. Gen. Dec. B-223823, 86-2 CPD & 627; Grade Way Const. v. United States, 7 Cl. Ct. 263 (1985).

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