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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Aquaterra Contracting, Inc.

File: B-400065

Date: July 14, 2008

Timothy A. Sullivan, Esq., Payne Hackenbracht & Sullivan, for the protester.
Parag J. Rawal, Esq., and Deena G. Braunstein, Esq., Department of the Army, Corps of Engineers, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's rejection of bid as late is denied where bidder's failure to address and label its bid package as instructed by the solicitation was paramount cause of its late arrival to bid opening location.

DECISION

Aquaterra Contracting, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. W912P8-08-B-0019, issued by the Department of the Army, Corps of Engineers, for dolphin replacement work at Calcasieu Lock, Calcasieu Parish, Louisiana.

We deny the protest.

The IFB, as amended, required that sealed bids be submitted by 2 p.m. on February 11, 2008; bids were to be addressed to the attention of a particular contracting specialist (the identified point of contact for the procurement) at a post office box address in New Orleans, Louisiana. IFB, Standard Form 1442.¹ The IFB also advised that bids were to be submitted in sealed envelopes labeled with the time and date for receipt, the solicitation number, and the name and address of the

¹Amendment No. 2 to the solicitation notified all prospective bidders that the contracting specialist initially identified in the IFB would no longer be the point of contact for the procurement and identified another contracting specialist as the new point of contact.

bidder; the IFB emphasized that it was the bidder's responsibility to submit its bid in a timely fashion to reach the designated office by the specified bid opening time. Id. at 2-3. A checklist of bid preparation reminders issued with the solicitation reiterated that bidders were to identify on the face of their bid envelopes the solicitation number and the time and date of the scheduled bid opening.

Aquaterra submitted its bid via commercial carrier in a sealed envelope that failed to identify in any way that the package was time-sensitive or contained a bid (no solicitation number or bid opening information was marked on the envelope); the protester failed to address the envelope to the amended point of contact and failed to address the package to the post office box address identified in the IFB for the submission of bids. Rather, Aquaterra submitted its bid in an envelope addressed to "Contracting Officer" at the street address of the agency's contracting division, which address was identified in the solicitation amendments as the office that issued the amendments.²

Aquaterra's bid package arrived in the agency's mailroom at 9:53 a.m. on February 11. At approximately 1:45 p.m., the envelope left the mailroom for delivery to the contracting division. At 2 p.m., the contracting specialist identified as the point of contact left her office to conduct the bid opening in a nearby conference room. Five hand-delivered bids were opened at that time; Aquaterra's bid had not reached the contract specialist in time for the bid opening.

The protester's bid package and another firm's bid package were delivered to the contracting division at approximately 2 p.m. (the agency reports that while it is possible the bids may have arrived at the contracting division just prior to the 2 p.m. bid opening, there is no evidence that shows the actual time of receipt). The agency reports that since the protester's package was only generally addressed to "Contracting Officer" (where there are 13 contracting officers in that division), and the other bid was addressed to a former agency employee, the packages were left for one of the contracting officers to help identify the correct destinations for the packages. That contracting officer found the packages upon returning from meetings 2 hours later. When she opened Aquaterra's package, she found it contained a bid and forwarded it to the point of contact for the procurement.

The next day, the contracting officer handling the procurement reasoned that, since Aquaterra's bid package and the other firm's bid package had been received at the mailroom approximately 4 hours prior to bid opening, it was government mishandling that caused the bids to arrive at the bid opening location late. After

² Aquaterra notes that the contracting division address is the only office location identified in the amended solicitation and that the post office box provided for bid submission is inapplicable to handcarried bids submitted by commercial carriers that require a street address for delivery.

applying the applicable 10-percent price preference for Historically Underutilized Business Zone firms, Aquaterra's bid became low and award was made to the firm. However, in reviewing an agency-level protest filed by the bidder next in line for award, alleging that the Aquaterra bid was submitted late, the contracting officer for the first time recognized that Aquaterra's bid package envelope had not been addressed or labeled as directed by the solicitation. The contracting officer concluded that the firm had significantly contributed to the lateness of its bid, and, finding that government mishandling was not the paramount cause of the lateness of the bid, the contracting officer terminated the award, rejecting the protester's bid as late.³ This protest followed.

Aquaterra contends that its bid was not late, since it was received by the agency's mailroom, and possibly, by the contracting division, before the 2 p.m. bid opening time, and had been in the government's custody between its receipt and the bid opening. In this regard, the protester argues that, even though it did not address its bid package envelope as instructed by the IFB, since the IFB did not specify a particular location for the bid opening, its bid's documented receipt at the agency's mailroom, or the possibility that the bid was in fact delivered to the contracting division before 2 p.m., should be used to measure the timeliness of its bid. Alternatively, the firm argues that if its bid was late, government mishandling in not delivering its bid to the contracting division sooner was the paramount cause of its lateness. While the protester concedes that its own bid package did not provide any indication to the mailroom personnel that the package contained a bid to be sent to the contracting division immediately, it argues that its bid should be considered due to government mishandling, since the other bid package delivered with Aquaterra's to the mailroom was labeled as containing a bid and it too was delivered late to the bid opening from the mailroom. In effect, Aquaterra surmises that even if its bid package had been properly addressed and labeled, it still would have been mishandled here.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid generally requires its rejection even if it is the lowest bid. J.C.N. Constr. Co., Inc., B-270068, B-270068.2, Feb. 6, 1996, 96-1 CPD ¶ 42 at 3; Aztec Dev. Co., B-256905, July 28, 1994, 94-2 CPD ¶ 48 at 3. A bid is late if it does not arrive at the office designated in the solicitation by the time specified, Federal Acquisition Regulation § 14.304(b)(1); Aztec Dev. Co., *supra.*, and, normally, receipt at other places, such as a post office box or the agency's mailroom, is insufficient. Biones Constr. & Equipment Co., Inc., B-279575, June 29, 1998, 98-1 CPD ¶ 175 at 4-5. In this regard, bidders must allow a reasonable time for bids to be delivered from the designated point of receipt (such as in this case, a post office box) to the bid opening room which is the ultimate destination for bid opening. See

³ The agency reports that, since the firm had already ordered the required steel for the work, it only partially terminated the award in order to receive the ordered steel.

Bay Shipbuilding Corp., B-240301, Oct. 30, 1990, 91-1 CPD ¶ 161 at 3, n.1. Our review of the record shows that although the protester's bid was received at the agency's mailroom, an intermediate stop for delivery of the package, approximately 4 hours prior to bid opening, there is no evidence that the bid was received by the contracting division before the 2 p.m. bid opening. Further, the contracting specialist to whom bids were to be addressed and who conducted the bid opening did not receive the protester's bid package until approximately 2 hours after bid opening. Accordingly, we find reasonable the agency's determination that the bid was late.

While a late hand-carried bid may be considered if it is determined that the late receipt was due primarily to government mishandling after receipt at the government installation, a late bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its own responsibility to submit its bid in a timely manner. Comspace Corp., B-281067, Nov. 30, 1998, 98-2 CPD ¶ 122 at 2. Where, as here, a bidder fails to record on its bid's sealed envelope required information as to the solicitation number it is responding to, and the deadline for its receipt, and, moreover, as here, also fails to address its bid submission to the required point of contact at the address provided in the IFB for bid submission, the bidder is usually primarily responsible for any delay in its delivery. Boines Constr. & Equipment Co., Inc., *supra*. In this case, the protester failed to address its bid to the appropriate individual, and failed to mark its bid package envelope in any way to indicate that it contained time-sensitive bid information, which caused the package to be sorted for standard delivery to the contracting division, rather than under the mailroom's accelerated procedures for delivery of bid documents. We agree with the agency that the firm here failed to do what it reasonably could and should have done to ensure proper delivery, and its failure to take the available steps to ensure timely delivery was the paramount cause of the

bid's late receipt. Since there has been no showing of government mishandling of the bid package, the bid was properly rejected as late.⁴

The protest is denied.

Gary L. Kepplinger
General Counsel

⁴ To the extent the protester speculates that even if it had properly identified on its bid envelope that a bid was enclosed, the agency would have mishandled its bid, as it allegedly did for the other bid delivered late with Aquaterra's bid package (where that other bid was apparently marked with the solicitation number and bid opening information), we do not find Aquaterra's speculation in this regard persuasive as it provides no basis for us to question that Aquaterra's own actions were the paramount cause of its bid's late receipt. The protester's speculative surmise in this regard merely anticipates improper action by the agency on what would be a materially different set of facts than is present here. In any event, the argument fails to account for an additional defect in Aquaterra's bid submission, the firm's failure to address its bid package to the appropriate contact, which alone has been found to preclude a finding of government mishandling (i.e., even where a bid package is labeled with solicitation and bid opening information). See Comspace Corp., supra.