



Decision

Matter of: Stephen Lucas Construction, LLC

File: B-402654

Date: June 9, 2010

Joseph A. Yazbeck Jr., Esq., Yazbeck, Cloran & Bowser, PC, for the protester.
Bill Welch for Construction Management Engineering & Consulting, Inc., the
intervenor.

Peter Kraemer, Esq., Stacey North-Willis, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Awardee's bid was reasonably and properly considered for award where record established that the hand-carried bid was received by the agency prior to the time set for bid opening.

DECISION

Stephen Lucas Construction, LLC, of White City, Oregon, protests the award of a contract to Construction Management Engineering & Consulting, Inc. (CMEC), of Post Falls, Idaho, under invitation for bids (IFB) No. VA-786A-10-IB-0014, issued by the Department of Veterans Affairs (VA) for a columbarium and drainage improvements at the Eagle Point National Cemetery in Eagle Point, Oregon. The protester complains that the contracting officer improperly awarded the contract to CMEC, whose bid was not opened by the contracting officer at the public bid opening.

We deny the protest.

The IFB was issued as a total service-disabled veteran-owned small business set-aside on February 2, 2010; the IFB contemplated the award of a fixed-price contract. Bid opening was scheduled for 2 p.m. on March 3. The IFB recommended that bids be submitted by overnight courier service to the VA National Cemetery Administration, located at 811 Vermont Avenue N.W. in Washington, D.C. IFB at 1.

The record shows that on March 3 at 10:51 a.m., CMEC's bid, sent by Federal Express, was delivered to the address listed in the IFB for the VA National Cemetery Administration prior to bid opening. Agency Report (AR), Tab 8, Delivery Receipt. The bid package was in a Federal Express envelope addressed to the contracting officer and showed the correct delivery address; the bid package was received and signed for by a VA employee. Id. Once CMEC received confirmation that its bid package had been received by the agency, it contacted the contracting officer and advised him that its bid package had arrived. Also, on March 3, prior to bid opening, CMEC had a courier deliver a bid modification to the same address. The agency states that the awardee's bid modification was received at 12:40 p.m., but it was not date stamped until 1:52 p.m. AR, Tab 17, IFB Timeline; Tab 10, Bid Modification Envelop.

The agency reports that, on March 3 at 11:30 a.m., bid notices were issued to the guard desks at 810 and 811 Vermont Avenue N.W. in Washington, D.C. AR, Tab 17, IFB Timeline. At 12:25 p.m., the contracting officer went to the mail room at 810 Vermont Avenue N.W. to pick up the original bids, and at 12:40 p.m., he went to the front desk at 811 Vermont Avenue N.W. to sign for the bid modification from CMEC. Id. We note, however, that the IFB advised bidders to address the bids to the contracting officer and to hand-carry their bids to 811 Vermont Avenue N.W. The location at 811 Vermont Avenue N.W. is where the contracting officer picked up CMEC's bid modification, but failed to pick up CMEC's original bid.

Bid opening was conducted, and 11 bids and CMEC's bid modification were read by the contracting officer. The contracting officer states that he announced during bid opening that "if any bids are received by the VA before the 2:00 p.m. deadline and are not present at the bid opening, those bids are considered to be within VA custody and will be considered timely." Contracting Officer's Statement at 1. When the bids were read, CMEC's bid modification was the lowest in price and the protester's bid was the second lowest in price.

After the bid opening, the contracting officer received CMEC's original bid. After verifying that the bid had been received on March 3 prior to the deadline for receipt of bids, the contracting officer made award on March 23 to CMEC as the responsible bidder with the lowest-priced bid.

The protester argues that there is no proof that the agency had in its possession the CMEC bid prior to the bid opening. It maintains that the Federal Express tracking document simply shows that "something" was delivered on March 3 and that there is no evidence of a bid document with an agency date stamp proving receipt.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146 at 2. Where as here, a bid is delivered by a commercial carrier, the bid is regarded as hand-carried. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506 at 2. A late hand-carried bid may be considered for award, however, where improper

government action was the paramount cause of its late delivery and consideration of the late bid would not compromise the integrity of the competitive bid system. Id.

Contrary to the protester's assertion, neither procurement regulations nor decisions of our Office require that timely receipt of hand-carried bids be proved only by a time/date stamp or other documentary evidence maintained by the government installation. Santa Cruz Constr., Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7 at 2. Where, as here, the issue is whether a hand-carried bid was timely received by the agency, all relevant evidence, including commercial carrier records and statements made by government personnel, may be considered. Id.; Power Connector, Inc., B-256362, June 15, 1994, 94-1 CPD ¶ 369 at 2.

The evidence cited by the agency shows that CMEC's original bid was timely received by the agency. For example, the Federal Express tracking sheet submitted by the agency and CMEC shows that an agency employee signed for the original bid package at 10:51 a.m. on March 3. The record also evidences that CMEC acted in a manner reasonably calculated to ensure the delivery of the bid to the contracting officer before bid opening, and it was the agency's actions that were the paramount cause for the contracting officer not having the original bid at bid opening. In this regard, CMEC's bid package was properly addressed to the contracting officer and delivered to the address stated in the IFB, and CMEC confirmed with the contracting officer that its bid had been timely received. The contracting officer, however, failed to pick up the original bid at the proper location prior to bid opening.

The contracting officer states that at 2:50 p.m. on March 3, after he had read the bids at the bid opening, he noticed CMEC's original bid. The contracting officer then verified that the bid was received prior to bid opening. We further note that, since CMEC's bid was delivered to the VA well prior to the bid opening, and it remained in the VA's possession until it was opened, acceptance of the bid does not compromise the integrity of the bidding system. Kelton Contracting, Inc., B-262255, Dec. 12, 1995, 95-2 CPD ¶ 254 at 3. Moreover, there is no question that CMEC's bid modification was timely received by the agency.

The protest is denied.

Lynn H. Gibson
Acting General Counsel