

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTEST OF:

TRAFFIC LINES, INC.)	
)	CAB No. P-0715
Under Solicitation IFB)	
No. POKA-2005-B-0011-CR)	

For the Protester, Traffic Lines, Inc.: John W. Wopat, III, Esq., Efros & Wopat. For the Intervenor, D.C. Lines, Inc.: Robert A. Klimek, Jr., Esq. For the Government: Howard S. Schwartz, Esq., and Talia S. Cohen, Esq., Assistant Attorneys General, District of Columbia Government.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

OPINION

(Lexis-Nexis Filing ID 7698144)

Protester Traffic Lines, Inc., alleged in its protest that the District had improperly rejected Traffic's bid as late. The District's Agency Report and the Intervenor's brief assert that the Board must reject Traffic's bid because the bid was late. The Board agrees that the District properly rejected Traffic's bid as late.

BACKGROUND

The District of Columbia Department of Transportation ("DDOT"), Office of Administrative Services, Construction Procurement Support Branch, issued WASA issued Solicitation No. POKA-2005-B-0011-CR for FY 05 Federal Aid Hot Thermoplastic Pavement Marking. On August 25, 2005, DDOT issued an amendment changing the bid opening date to August 29, 2005. The bid opening time remained at 2:00 p.m. (AR Ex. 1). The bid form required bidders to submit their bids to the Department of Transportation, Office of Administrative Services, Construction Procurement Support Branch, 2000 14th Street, NW, 3rd Floor, Washington, DC, 20009. (AR Ex. 1). The IFB also required bidders to mark the bid in the following manner:

Mark envelope in upper left corner as follows:

Invitation No.: **POKA-2005-B-0011-CR**

To be opened (date):

At 2:00 P.M.

According to the protester, DHL Express delivered on August 29, 2005, at 10:21 A.M., a package to Temisha Lassiter, Customer Services Representative, Traffic Services Administration, DDOT. The package was addressed to the "Government of the District of

Columbia, 2000 14th St., N.W. 3rd floor, Washington, DC 20009, Contracting and Procurement, 202-698-3602. (AR Ex. 2). There were no markings on the package to indicate that the package included a bid.

Ms. Lassiter placed the package in the Field Operations Box so that the package could be sent to Mr. Frank Pacifico. (AR Ex. 5). At approximately 3:05 p.m., Mr. Pacifico came to retrieve his mail. Mr. Pacifico told Ms. Lassiter that the package should have been delivered to the bid room. (AR Ex. 5). At that point, Ms. Lassiter took the package to the bid room at approximately 3:17 P.M. (AR Ex. 3). On September 21, 2005, the Contracting Officer notified Traffic by letter that the District had rejected Traffic's bid because the bid was late. On September 30, 2005, Traffic filed its protest. D.C. Line, Inc., intervened in the protest on October 19, 2005.

DISCUSSION

Traffic asserts in its protest that the bid was timely delivered to the required address, and that it has no control over the internal routing of mail at the building. Traffic also asserts that it could not determine whether the low bidder, D.C. Line, Inc., truly exists. Because we conclude that Traffic's bid was untimely delivered, there is no need to address Traffic's assertion regarding the existence of the low bidder.

The District asserts that the protester's delivery vendor, DHL Express, delivered the package to the address noted on the package, and that the package did not include the delivery markings set forth in the IFB.

D.C. Code § 2-303.04 governs procurement by competitive sealed bidding. Title 27, Chapter 15, sets forth the procurement regulations applicable to competitive sealed bidding. Regulations addressing receipt of bids are set forth at 27 DCMR § 1523.2 and regulations governing consideration of a late bid for award are set forth at 27 DCMR § 1523.5. In pertinent part, these regulations provide:

1523.2 Any bid received at the place designated in the solicitation after the time and date set for receipt of bids shall be considered a "late" bid unless it was received prior to the contract award and either of the following applies:

- (a) It was sent by registered or certified mail not later than five (5) calendar days before the bid receipt date specified; or
- (b) It was sent by mail (or telegram if authorized) and the contracting officer determines that the late receipt was due solely to mishandling by the District after receipt at the location specified in the IFB.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. A late bid delivered by a commercial carrier may not be considered where it is late due to the failure of the bidder to fulfill its responsibility for ensuring timely delivery to the designated location. If the bidder did not significantly contribute to the late delivery, and the sole or paramount cause of the bid's late receipt in the bid opening room is due to government mishandling, the bid should be considered timely submitted. *See W.S. Jenks & Son*, CAB No. P-

0644, Aug. 14, 2001, 49 D.C. Reg. 3374, and *Quest Diagnostics*, CAB No. P-0480, July 9, 1997, 44 D.C. Reg. 6849.

Here, Traffic significantly contributed to the late delivery by failing to properly address the envelope containing its bid and by failing to deposit the bid at the location indicated in the solicitation (“Government of the District of Columbia” rather than “Department of Transportation, Office of Administrative Services, Construction Procurement Support Branch, 2000 14th Street, NW, 3rd Floor, Washington, DC 20009”).¹ Traffic also failed to indicate the Invitation number and bid opening date and time on the upper left corner of the envelope.

Accordingly, the contracting officer did not violate law or regulations in concluding that Traffic’s bid was untimely. We deny the protest.

SO ORDERED.

DATE: December 21, 2005

/s/ Warren J. Nash

WARREN J. NASH
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

¹ We note that the address set forth on the bid form at the bottom of the page in the instructions for marking the bid envelope (“Address as follows”) does not contain the line “Department of Transportation” that is included in items 1 and 3 in the instructions at the top of the Title Page (MD Ex. 1). However, Traffic did not mark its bid with either variation of the address.