

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

TRI GAS & OIL CO. INC.)	
)	
)	CAB No. P-0867
)	
Invitation For Bid No: DCAM-2011-B-0011-001)	

For the Protester, Tri Gas & Oil Co. Inc., Mr. John Dalina, *pro se*. For the District of Columbia Government: Robert Schildkraut, Esq., Assistant Attorney General, Office of the Attorney General.

Opinion by Chief Administrative Judge Marc D. Loud, Sr., with Administrative Judge Warren J. Nash, concurring.

OPINION

Filing ID 34792685

Protester Tri Gas & Oil Co., Inc. (“Tri Gas”) alleged in its protest that the District improperly rejected the Tri Gas bid as late. Tri Gas contends that its bid should have been accepted by the District because the admittedly late submission was “very minor” and would have resulted in the “lowest offer”. The District’s Agency Report asserts that the Board must reject the Tri Gas bid as late under 27 DCMR §1523.2 and prior decisions of the board. The Board agrees that the District properly rejected the protester’s bid. Accordingly, we dismiss the protest.

BACKGROUND

The Office of Contracting and Procurement (“OCP”) issued Invitation For Bid (“IFB”), DCAM-2011-B-0011 on October 20, 2010, for E85 fuel. (Agency Report (“AR”) Ex. 2). On October 21, 2010, OCP issued an amendment to provide responses to bidders’ questions, not pertinent hereto. The IFB required responses to the bid by 2:00 p.m. on October 26, 2010. (AR Ex. 2/p.1). The IFB further directed bidders to submit bids in the following manner:

Address Offer To:
Office of Contracting and Procurement
Transportation Specialty Equipment Group
2000 14th Street, N.W., 3rd Floor Bid Room (Reeves Center)
Washington, D.C. 20009 (AR Ex. 2/p.1)

The IFB also included the following language:

CAUTION: Late Submissions, Modifications, and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms and conditions contained in this solicitation. (AR Ex. 2/p.1).

On the bid opening date of October 26, 2010, three bids were received by the 2:00 pm submission deadline. The Tri Gas bid was received on October 26, 2010, at 3:07 pm. (AR Exhibits 1, 3 & 4). The Tri Gas bid was incorrectly addressed to the Office of Contracting and Procurement, 2000 14th Street, NW., *6th Floor (italics added)*, instead of 2000 14th Street, NW., 3rd Floor, as required by sections A.8 and A.9 of the IFB. (AR Exs. 1-2, 4). The bid room is located on the 3rd floor, and thus the Tri Gas bid package was not clocked in at the Bid Room per the IFB's requirements. (AR, Ex. 4, Contracting Officer Declaration).

It appears from the record that the Tri Gas bid was delivered express mail by the United States Postal Service to a representative in the contracting office of the District Department of Transportation ("DDOT") on the 6th Floor. (AR Exs. 1, 3 & 4). The DDOT employee delivered the Tri Gas bid package to the instant Contracting Officer on the 6th Floor soon after delivery. (AR Ex. 4). The Contracting Officer obtained a print out from the United States Postal Service website, which confirmed that the Tri Gas bid was delivered to DDOT at 3:07 pm on October 26, 2010. (AR Exs. 1, 3 & 4). The USPS tracking form shows that the bid entered the US mail system on October 25, 2010. (AR Ex. 3). Tri Gas was notified on October 28, 2010, that its bid was considered late. (AR Exs. 1 & 4).

DISCUSSION

In its protest, Tri Gas does not dispute that its bid was addressed and delivered to the wrong floor, and delivered after the 2:00 p.m. deadline. Tri Gas has included in its protest a United States Postal Service tracking form that shows the untimely delivery to the erroneous location. Rather, Tri Gas argues that its bid submission errors were "minor" and that, if accepted, its bid would have offered the lowest price.

The rules regarding the acceptance of late bids are set forth in 27 DCMR 1523.2:

Any bid received at the place designated in the solicitation after the time and date 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 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.

Furthermore, we have previously stated the general rule that bidders are responsible for delivering their bids to the proper place at the proper time. *Protest of Traffic Lines, Inc.*, CAB No. P-0715, December 21, 2005, 2005 DCBCA LEXIS 13 (citing *W.S. Jenks & Son*, CAB No.

P-0644, August 14, 2001, 49 D.C. Reg. 3374 and *Quest Diagnostics*, CAB No. P-0840, July 9, 1997, 44 D.C. Reg. 6849). In *Traffic Lines*, *infra* at p.2, we found that the District had properly rejected a bid that arrived in the bid room approximately one hour and seventeen minutes past the deadline. We noted, *inter alia*, that the protester had “significantly contributed to the late delivery by failing to properly address” its bid. (*Id.* at p.3).

Both the governing regulations and precedent noted herein do not allow consideration of a late bid under the circumstances presented by protester. The Tri Gas bid was sent by mail one day before the deadline as opposed to the five days referenced in section 1523.2(a). Additionally, the Tri Gas bid was addressed improperly by the protester and its late receipt was due to the protester’s inaccurate address. There is no evidence in the record of agency mishandling of the Tri Gas bid.

Accordingly, we deny the protest.

CONCLUSION

For the reasons discussed above, we deny the Tri Gas protest.

SO ORDERED.

DATED: December 10, 2010

/s/ Marc D. Loud, Sr.
MARC D. LOUD, Sr.
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge