

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of)
PIONEER OIL COMPANY, INC.) Docket No. MSBCA 1060
)
Under DGS Quotation Request P-12711)

May 7, 1982

Contract Award - Late Bid — A bid received after the time and date set in the invitation for bids is late and may not be considered for contract award where the bid's untimely receipt was not due to the action or inaction of State procurement personnel, the only exception permitted by Maryland's late bid rule.

Contract Award - Late Bid — Maryland procurement law does not permit relaxation of Maryland's late bid rule because of inefficient mail handling by the U.S. Postal Service.

APPEARANCES FOR THE APPELLANT:

Mr. S. S. Simon, President
Pioneer Oil Company, Inc.
Philadelphia, Pennsylvania

APPEARANCES FOR THE RESPONDENT:

Paul S. Sugar
Assistant Attorney General
Baltimore, Maryland

OPINION BY MR. KETCHEN

This timely appeal is taken from a Department of General Services (DGS) procurement officer's final decision that Appellant's bid for the supply of antifreeze to the Mass Transit Administration was late and could not be considered for award. Appellant contends that its bid should have been opened since acceptance would have resulted in a savings to the State and because the lateness of its bid was due solely to the tardiness of the U.S. Postal Service. Appellant requests that this Board take appropriate action to require that its bid now be opened and considered by the DGS procurement officer for award.

Findings of Fact

1. On November 10, 1981 the DGS Purchasing Bureau issued an invitation for bids (IFB) for the purchase of antifreeze on behalf of the Maryland Department of Transportation Mass Transit Administration. The IFB specified that bids were to be submitted to the Purchasing Bureau by 2:00 p.m. on December 28, 1981.

2. Appellant's bid was prepared at its corporate headquarters in Philadelphia, Pennsylvania and transmitted to DGS by first class mail. The bid envelope was postmarked December 22, 1981 at 4:00 p.m. The DGS Purchasing Bureau received the bid on December 29, 1981 where it was stamped in at 9:31 a.m.

3. During the hearing in this appeal, the DGS procurement officer testified that Appellant's mailed bid was handled in accordance with the DGS Purchasing Bureau's

regular mail handling procedures (Tr 26-28) and was stamped in shortly after it was delivered by the U.S. Postal Service. This testimony was not disputed by Appellant (Tr 13). Accordingly, we find that Appellant's bid was not received by DGS until the day after the date and time specified in the IFB for submittal of bids and the bid's lateness was not due to any mishandling by the DGS Purchasing Bureau.

4. Since it was received after the time set for bid opening, Appellant's bid was not opened or considered for award.

5. After learning that DGS had refused to consider its bid, Appellant submitted a bid protest on January 6, 1982.

6. The DGS procurement officer, in a written decision dated January 7, 1982, determined that Appellant's bid was inexcusably late and could not be opened or considered for award.

7. Appellant filed a timely appeal from the procurement officer's decision on January 19, 1982.

DECISION

Since Appellant's bid was received at the place designated in the solicitation after the time and date set for receipt of bids, it clearly was late. See COMAR 21.05.02.10A.¹ Late bids, under Maryland's procurement regulations, are required to be treated by procurement officers in the following manner:

... A late bid, late request for modification, or late request for withdrawal may not be considered. Exceptions may be made when a late bid is received before contract award, and the bid, the modification, or withdrawal would have been timely but for the action or inaction of State personnel concerning the procurement activity or their employee. A late modification of a successful bid which makes its terms more favorable to the State shall be considered at any time it is received and may be accepted. (Underscoring added.)

See COMAR 21.05.02.10B.² Here the lateness of Appellant's bid was not due to the action or inaction of State personnel. Accordingly, the DGS procurement officer acted properly in not considering Appellant's bid for award.

Notwithstanding the foregoing regulatory provision, Appellant contends that it was not in the State's best interests, under these facts, to reject a bid which would have offered a considerable savings. Further, since the lateness of Appellant's bid was due solely to the inefficiency of the U.S. mail and the bid clearly was out of its control prior to bid opening, Appellant argues that the consideration of its bid would not have adversely affected the fairness of the competitive bidding. In this regard, Appellant

¹8:9 Md. R. S-46 (May 1, 1981).

²8:9 Md. R. S-46 (May 1, 1981).

cites Federal procurement regulations which excuse lateness under similar circumstances.³

Although Federal agencies may excuse lateness of mailed bids under circumstances involving inefficient mail handling by the U.S. Postal Service,⁴ Maryland's procurement regulations do not. While we recognize that the requirements of Maryland's late bid rule may operate harshly in certain instances, there is no basis for this Board to relax its application. Cf. Solon Automated Services, Inc., MSBCA 1046 (January 20, 1982) at pp. 28-29.

For the foregoing reasons therefore, Appellant's bid protest is denied.

³Federal procurement regulations provide that:

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

- (1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or
- (2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

41 C.F.R. § 1-2.201(a)(31); 41 C.F.R. § 1-2.303-3 (1981); DAR § 7-2002.2(a)(i).

⁴Even under the relaxed Federal standards, Appellant's bid could not have been opened since it was not transmitted by certified or registered mail.

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Section 1

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Section 2

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