



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Department of Housing and Urban Development--Reconsideration

File: B-279575.2

Date: November 4, 1998

Jud E. McNatt, Esq., Department of Housing and Urban Development,
for the agency.

John I. Hulse IV, Esq., Hulse & Wanek, for the protester.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. On reconsideration, contracting agency has not shown that the low bid, hand-carried by a commercial carrier to the agency's mailroom prior to bid opening, was timely received, where the bid was not received in the office designated in the invitation for bids until after bid opening.
2. A contracting agency has the discretion to initially determine whether or not it may have been the paramount cause of the late receipt of a bid. The agency, however, did not act reasonably in determining that the low bid's late receipt at the office designated for receipt of bids was primarily due to government mishandling in the mailroom (which received the bid prior to bid opening) where the bidder did not properly address and mark the envelope containing its bid with the office designated in the invitation for bids (IFB), the solicitation number, and bid opening time and date, as required by the IFB, and the agency does not establish that the mailroom acted unreasonably in its handling of the bid.

DECISION

The Department of Housing and Urban Development (HUD) requests reconsideration of our decision in Boines Constr. & Equip. Co., Inc., B-279575, June 29, 1998, 98-1 CPD ¶ 175, in which we sustained the protest filed by Boines Construction & Equipment Co., Inc. of an award to Pierce Foundations, Inc., under invitation for bids (IFB) No. B-FTW-00041, issued by HUD for demolition of vacant buildings and related site work at public housing projects in Louisiana.

We deny the request for reconsideration.

We sustained the protest because Pierce's low bid, delivered by commercial carrier to HUD's mailroom prior to bid opening, was not received at the location designated in the IFB--the bid depository in the building's contracting division--by bid opening, as required. We also concluded that HUD's acceptance of Pierce's late bid did not comply with the Federal Acquisition Regulation (FAR) §§ 14.304-1(a)(2), 52.214-7(a)(2) standard for consideration of a late hand-carried bid: the late receipt must be due primarily to government mishandling after receipt at the government installation. We found that the lateness of Pierce's hand-carried bid was attributable to that bidder's failure to ensure that the outermost envelope of its bid was addressed to the office designated in the IFB, and marked with the solicitation number and bid opening time and date, as required by the FAR § 52.214-5 bid submission instructions incorporated into the IFB.

To prevail on a request for reconsideration, the requesting party must show that our prior decision contains either errors of fact or law or present information not previously considered that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a) (1998); Department of the Army--Recon., B-271492.2, Nov. 27, 1996, 96-2 CPD ¶ 203 at 5. HUD has made no such showing.

HUD asserts that the IFB in Boines did not designate a particular office for the receipt of hand-carried bids, so that the receipt of Pierce's bid in the HUD mailroom prior to bid opening should have been sufficient to render Pierce's bid timely received. As support for its position, HUD points to C.R. Hipp Constr. Co., Inc., B-274328, Nov. 20, 1996, 96-2 CPD ¶ 195, in which we regarded as timely a mailed bid received in an agency's mailroom by the bid opening time because the solicitation did not designate a particular office for receipt of bids.

HUD's reliance on C.R. Hipp is misplaced. In that case, there was the unusual circumstance that no particular office at all was designated in that IFB to which a bidder could address or deliver its bid.¹ Here, in contrast, the IFB effectively designated the HUD contracting division as the office for receipt of bids. Notwithstanding HUD's objection that the IFB did not explicitly state that the depository for hand-carried bids was located in the contracting division, this can be the only reasonable interpretation of the IFB, since the contracting division was the office designated in the IFB to which bids were to be addressed, and was the office that issued the solicitation and listed its telephone number on the IFB cover sheet for purposes of providing any needed information. (We also note that in its request for reconsideration HUD does not dispute that the bid depository was actually located in the contracting division.) Accordingly, since Pierce's bid was received in

¹Also, unlike Boines, the bid at issue in C.R. Hipp was delivered by the mailroom clerk to the bid opening official before the actual opening of bids. C.R. Hipp Constr. Co., Inc., *supra*, at 1-2.

the office designated in the IFB (the contracting division) after the exact time set for bid opening, it was a late bid under FAR §§ 14.304-1, 52.214-7(a).

HUD next contends that, even if Pierce's bid was late, our Office erroneously overruled the contracting officer's determination that Pierce's omission from the outermost envelope of its bid of the office designated in the IFB, the solicitation number, and the bid opening time and date did not contribute to the late receipt of the bid. HUD maintains that we failed to adequately explain why we disregarded the contracting officer's determination that Pierce's bid was late due primarily to government mishandling, considering that it was delivered to the mailroom approximately 5 hours prior to bid opening and the outermost envelope of Pierce's bid was marked "BID ENCLOSED" with the telephone number of the contracting division.

We agree that it is within the contracting agency's discretion to initially determine whether or not it may have been the primary cause of the late receipt of a bid or proposal. Nevertheless, although our Office will not substitute its judgment in this regard, we will review the reasonableness of the agency's determination, including its determination that the late receipt of a hand-carried bid was due primarily to government mishandling after receipt at the government installation. See FAR §§ 14.304-1(a)(2), 52.214-7(a)(2); Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6-7.

As we explained in Boines at 5-6, we essentially found unreasonable the agency's determination that it, rather than Pierce, was the primary cause of the late receipt of Pierce's bid because the mailroom's misrouting of Pierce's bid was directly attributable itself to Pierce's failure to address and mark the bid as required by the bid submission instructions incorporated into the IFB. Although the envelope containing Pierce's bid was marked as a bid, the record showed that another HUD office in the same building also handled bids, and the contracting officer herself stated that "the word 'Contracting,' the mail code 6AAC for Contracting, or a room/floor number would have given more specific direction as to distribution of the bid." Contracting Officer's Statement at 4. HUD has not established why, under these circumstances, the agency could reasonably expect the mailroom to have routed Pierce's bid to the contracting division.

Further, due to Pierce's failure to address and mark its bid envelope as required the mailroom had no particular reason to expedite delivery or to call the telephone number of the contracting division on the mailing label of Pierce's bid envelope. HUD has supplied no evidence that the mailroom was required or expected to take such action in the absence of a clear indication that immediate attention was required. In sum, as Pierce did not address and mark its bid as required by the IFB,

it was unreasonable for HUD to conclude, under the circumstances here, that the government was primarily responsible for the lateness of Pierce's bid.²

Since HUD has not shown that our prior decision contains either errors of fact or law, or presented information not previously considered that warrants reversal or modification of our decision, HUD's request for reconsideration is denied.

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²Even if, as HUD contends, Pierce's marking of the outside of its bid envelope with the solicitation number and bid opening time and date would not have ensured timely delivery by the mailroom, we note that if Pierce had done so (as well as correctly addressed its bid), it would have done all it reasonably could have to properly address and mark its bid envelope. This then would have supported a determination that government mishandling was the paramount cause for the late receipt of the bid.