

**May 14, 1997**

**P.S. Protest No. 97-05**

## **SCHINDLER TRUCKING, INC.**

**Solicitation Nos. 150-51-97 *et al.***

### **DIGEST**

Protest against failure to consider late bids is denied where the protester did not establish that their lateness was the result of the Postal Service's improper action.

### **Decision**

Schindler Trucking, Inc.,<sup>1</sup> protests the failure of the contracting officer to accept its hand-carried bids on three solicitations for highway transportation service issued by the Allegheny Area Distribution Networks office, numbered 150-51-97, -52-97, and -54-97, for which bids were to be opened at 2 p.m. on Tuesday, March 4, 1997.

Writing on behalf of the protester, Ms. Robyn Morris recites:

I went to Marquis Plaza<sup>[2]</sup> to participate in the bid opening, and I arrived at 1:50 PM and proceeded to the 2nd floor where you have to ring to get into the office. No one was at the door. . . . [Transportation Specialist] Barb Spelic went past the door and let us in. [No one was at the receptionist's

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<sup>1</sup> "Schindler Trucking, Inc.," is the name typed on the protest letter and as the return address on the envelope. The letterhead, however, is that of "Schindler Trucking & Repair."

<sup>2</sup> The solicitations stated that bids could be submitted in person to:

Allegheny Area DN  
Attn: Bid Custodian  
[Solicitation number]  
One Marquis Plaza  
5315 Campbells Run Rd  
Pittsburgh PA 157277-7070

desk to register our bids.] Someone tried to help us [who] finally went to [contracting officer] Peter Bacola to find out about the bids. He then told us that they were late bids and [he] did not want the bids after 2:00 [PM]. We tried to tell him that we were there trying to get waited on. He did not want to hear it. He wouldn't even give a straight answer [whether] they would even accept the bids or not.

They wouldn't even direct me to the bid room. It was not in the same place from the last time or I would have just [gone] in because that is public information.

The protest complains of the "wrongness" of these failings.

The contracting officer's statement on the protest recites the provisions made to assure that bidders have access to the bid depository:

There is a telephone in the second floor lobby, just outside the elevator. There is a sign which directs persons with transportation bids to call three specific phone numbers . . . [including the contracting officer and includes] a complete list of the names and phone numbers for the whole office.

The contracting officer advises that he was not called by any bidders for at least thirty minutes before the bid opening. He was in his office when he was advised that "some people . . . wanted to take bids into the bid opening." He stepped out of his office to his secretary's work station, where hand carried bids were received, and met the Schindler party, a gentlemen whom he recognized as Mr. Charles Ackerman and a woman he did not recognize whom he assumes was Ms. Moore.<sup>3</sup> He looked at the clock, noted that it was 2:10 p.m., and so stated. Mr. Ackerman undertook to explained that they had had trouble getting in from the lobby, but the contracting officer surmised, from their embarrassed demeanor, "that they knew they were late."

Having ascertained from another transportation specialist that the bid opening had started, the contracting officer reiterated that the bids were late, to which "[n]o one responded, the three simply turned and left, taking their bids with them." The contracting officer denies indicating "in any way that I did not want the bids."

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<sup>3</sup> Mrs. Ackerman arrived subsequent to Mr. Ackerman and Ms. Moore.

The contracting officer advises that he subsequently learned that Transportation Specialist Spelic had passed through the second floor lobby at 2:05, at which time she saw no one there. Returning to the area two or three minutes later, she saw and admitted Mr. Ackerman and Ms. Moore.

The protester submitted no response to the contracting officer's statement.

## Discussion

The protester's contention appears to be that its lateness may be excused because of the difficulty of obtaining access to the bid custodian. That contention fails. To the extent that the accounts of the protester and the contracting officer differ, "it is well settled that in a factual dispute we accept as true the statements made by the contracting officer absent controversion by the protester or sufficient evidence to overcome the presumption of correctness which attaches to the contracting officer's statements or action." *OSM Corporation*, P.S. Protest No. 91-62, April 30, 1992.

Here, the protester has not refuted Transportation Specialist Spelic's account of observing no one in the lobby at 2:05 and returning later to discover the Schindler party there. Given this scenario, neither difficulty in entering the office nor the absence of the bid custodian occasioned the party's delay. ("Whether a hand-carried [offer] is late is measured by its time of arrival at the office designated in the [solicitation], not by its time of arrival at an agency's lobby . . . ." *Occu-Health, Inc.*, Comp. Gen. Dec. B-250042, October 30, 1992, 92-2 CPD ¶ 314.)

As a general rule, a bidder is responsible for delivering its bid to the proper place at the proper time; a bid is late if it does not arrive at the office designated in the solicitation by the time specified . . . . A late hand-carried bid may be considered where the protester shows that improper action on the part of the government is the sole or paramount cause of the bid's late receipt.

*Great Plains Asbestos Control, Inc.*, Comp. Gen. Dec. B-271871, July 15, 1996, 96-2 CPD ¶ 19.

"Delays in gaining access to . . . government buildings are not unusual and should not be unexpected . . . and do not, as a general rule, result from improper government action." *National Blower and Sheet Metal Company, Inc.*, Comp. Gen. Dec. B-194895, October 3, 1979, 79-2 CPD ¶ 240.

Given the availability in the second floor lobby of a telephone and appropriate information for bidders seeking access, we cannot conclude that the absence of a postal representative immediately at the office door was either improper or the primary cause of the bid's late delivery.

The protest is denied.<sup>4</sup>

William J. Jones  
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Contract Protests and Policies

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<sup>4</sup> We note concern with two aspects of the treatment of the Schindler bids. First, since it is the bid opening officer who is to establish when the time for bids to be opened has arrived, *cf. McNutt, Dudley and Easterwood*, 40 Comp. Gen. 709 (1961), the better practice would have been for the Schindler party to have been shown to the bid opening room for the bid opening officer's determination. Second, the late bids should have been received by the bid opening officer and retained under the late bid procedure set out at Procurement Manual 12.7.4.e. Doing so would have avoided any question about the content of the bids had it been established that they were entitled to consideration.