

R&A MOVERS, INC.

Appellant,

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-10

OPINION

INTRODUCTION

R&A Movers, Inc. (“Appellant”) appeals the decision of the Baltimore City Board of School Commissioners (“local board”) not to accept Appellant’s bid for moving and hauling services because the Appellant failed to timely submit its bid to the Office of Materials Management (Procurement Office). The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. Appellant responded to the local board. The local board did not file a reply to Appellant’s response.

FACTUAL BACKGROUND

This appeal concerns a bid to perform moving and hauling services. On April 16, 2019, Baltimore City Public Schools (“BCPS”) issued an Invitation for Bids (“IFB”), IFB-19090, for “moving and hauling services for the transportation of furniture, equipment, textbooks, etc. from various Baltimore City Public Schools locations on an as-needed basis.” (Response, Ex.1). The IFB specified the deadline for contractors to submit their bids. It stated as follows:

In order to be eligible for consideration, bids must be received at City Schools Office of Procurement no later than **11:00 am local time, Thursday, May 23, 2019 in Room 401**. Vendors mailing bids shall allow sufficient carrier delivery time to ensure timely receipt of their bid in the Office of Materials Management (Room 401) prior to the deadline. Any bid received in the Office of Procurement after the submission deadline, no matter what the reason, will be returned unopened. Delivery to the City Schools’ mailroom, lobby etc. shall not constitute delivery to the Office of Procurement located in Room 401.

(*Id.* at p.12 - IFB-19090, Part II: General Terms and Conditions, Section 11.0: Submission Deadline)(emphasis in original). In Addendum #8 to IFB-19090, BCPS changed the bid due date to “**Thursday, July 25, 2019 at 11:00 a.m.**” (Response, Ex.2) (emphasis in original). IFB-19090 also identified Mr. Stuart Feldman, BCPS’ Buyer, as the person to whom inquiries should be directed and provided his contact information. (Response, Ex.1 at p.1).

Ms. Ann Kinard, owner and Chief Financial Officer of R&A Movers, brought the bid to BCPS headquarters on July 25, 2019. Video footage captured the following actions: Ms. Kinard entered the building at 10:57:47 a.m. (Response, Ex.3); security processed Ms. Kinard at 10:59 a.m. (Response, Ex.4); Ms. Kinard walked down a long corridor, summoned the elevator, rode the elevator to the fourth floor and exited the elevator on the fourth floor at 11:00:23 a.m. (Response, Ex.6). Ms. Kinard then walked down a hallway to the Office of Materials Management (Procurement Office). The bid was time stamped at 11:02 a.m.

By letter dated July 26, 2019, Joseph F. Vogel, Interim Director of Materials Management, advised the Appellant that BCPS was returning its bid for IFB-19090 because BCPS did not receive the bid until Thursday, July 25, 2019 at 11:02 a.m., after the submission deadline. (Response, Ex.12). The letter enclosed a copy of the date and time stamp on the Appellant's bid. *Id.*

That same day, Appellant filed a bid protest with BCPS maintaining that the Appellant timely submitted the bid. (Response, Ex.11). The Appellant claimed that Mrs. Kinard arrived at BCPS headquarters before 11:00 a.m., received a visitor's pass, and proceeded the fourth floor looking for Room 401 where there were no visible signs indicating the location of the bid submission area. *Id.* The Appellant stated,

Once in the procurement office, Mrs. Kinard asked for Mr. Stuart Feldman, the contact person identified on the [IFB]. After a few crucial minutes, he motioned her to walk back to another office and hand the bid to a woman who was engaged in conversation with another person sitting at her desk. The woman then indicated that it was 10:56 am when Mrs. Kinard passed her cubicle, and the bid would be considered late. After the woman conferred with another woman about accepting the bid, she took the bid and time-stamped it.

Id. The woman who time stamped the bid has been identified as Patricia Graff. (Response, Ex.15).

On August 7, 2019, Mr. Vogel convened a protest conference at which Ms. Kinard was present. On August 12, 2019, Mr. Vogel denied the bid protest because it was not submitted in time. (Response, Ex.14). He explained that the video surveillance throughout the building showed that Ms. Kinard "knew where to submit the bid and was simply too late." *Id.* He stated that the fact that Ms. Kinard did not even enter the building until 10:57:46 a.m. demonstrates that she did not allow a reasonable amount of time to pass through security, travel to the fourth floor, and submit the bid. He further stated that the video of Ms. Kinard exiting the elevator at 11:00:23 a.m. shows that it was "too late to timely submit R&A's bid." Finally, he states that the time stamp at 11:02 a.m. "shows that Ms. Kinard was directed to the time stamp with reasonable promptness and was not unduly delayed by [BCPS personnel]." *Id.*

On August 19, 2019, the Appellant filed exceptions to the protest denial. (Response, Ex.15). Appellant maintained that the IFB lacked specificity concerning the location of Room 401 or to whom within the room the bid should be delivered; that there was no evidence of the accuracy of the video footage time stamps or synchronicity with the time stamp clock in Room 401; that BCPS failed to consider Appellant's claim that the BCPS employee noted that it was

10:56 a.m. when Ms. Kinard passed her cubicle; and that BCPS failed to comply with its own IFB concerning the submission of bids “at” 11:00 a.m. instead of “prior” to 11:00 a.m. *Id.*

On August 28, 2019, Mr. Vogel rejected the exceptions. (Response, Ex.16). He found that the street address, room number, and contact person provided in the IFB, as well as the signage on the fourth floor and in Room 401 was all reasonably specific with regard to the location of where to submit the bids. *Id.* He noted that seven other bidders timely submitted their bids and the Appellant had previously timely submitted bids at the same location. *Id.* Mr. Vogel clarified that he used the time stamp on the video footage as support for finding the bid was submitted too late, but ultimately based his rejection on the basis that the bid was time stamped at 11:02 a.m.¹ *Id.* Mr. Vogel also stated that the BCPS employee at issue, Ms. Graff, disputes Ms. Kinard’s account of events and maintains that Ms. Kinard entered Room 401 after 11:00 a.m. *Id.* He further stated that four BCPS employees could attest to the fact that Ms. Kinard was promptly provided with clear instructions on the precise location (Ms. Graff’s desk) and manner (getting a time stamp) for filing the bid, which was the same procedure when Appellant last submitted a bid. *Id.*

Appellant appealed to the local board. On October 22, 2019, the local board denied the appeal finding that the Director of Materials Management properly determined that Appellant’s bid to IFB-19090 was not timely submitted. (Response, Ex.17). The local board found that IFB-19090 provided specific information to prospective vendors necessary to allow for the timely delivery of bid responses and that the instruction of the IFB were not vague. *Id.*

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board’s decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

The primary issue in this case concerns whether the Appellant timely submitted its bid to BCPS in Room 401 (BCPS Office of Procurement) “at 11:00 a.m.” The purpose of the exact time requirement is not only to give all bidders an equal opportunity, to prevent fraud, and to preserve the integrity of the competitive bid system, but to provide a clear cut-off point after which bids will not be accepted. *William F. Wilke, Inc. v. Dep’t of Army of U. S.*, 357 F. Supp. 988, 998 (D. Md. 1973), *aff’d*, 485 F.2d 180 (4th Cir. 1973).

Appellant argues that BCPS personnel unreasonably delayed Ms. Kinard, and that the delay caused her to submit a bid time stamped at 11:02 a.m. rather than at 11:00 a.m. Appellant claims that once in Room 401, Ms. Kinard was delayed first by Mr. Feldman, the only named point of contact for the IFB, and then by Ms. Graff, who was not named anywhere in the IFB. Appellant states that “[i]f not for the City personnel’s delay in accepting and stamping R&A’s bid, R&A’s bid would have been ‘received’ by 11:00:59 AM when Ms. Kinard reached Mr.

¹ The time stamp used to clock the bid submissions is synchronized to the atomic clock, which is the official standard in the United States. (Response, Ex.16).

Feldman inside of Room 401(at the earliest, as is R&A’s argument) or when time stamped by Ms. Graff (at the latest, as is the City Board’s argument).”

We acknowledge that the Appellant has consistently maintained that delay by BCPS employees once in Room 401 resulted in the 11:02 time stamp. Nevertheless, Appellant has not submitted any evidence, by affidavit or otherwise, to support the claim. Without any evidence, Appellant’s narrative of events amounts to nothing more than mere allegations. The Appellant has the burden to prove by a preponderance of the evidence that the local board’s decision was arbitrary, unreasonable or illegal. COMAR 13A.01.05.06(D). The Appellant simply has not met that burden here.

The Appellant takes issue with the local board’s determination that the video footage is evidence that the bid was late because the time stamp shows Ms. Kinard exiting the fourth floor elevator at 11:00:23 a.m. Appellant argues that the IFB language requiring receipt of a bid “at 11:00 a.m.” means that any bid received at 11:00:01 through 11:00:59 a.m. was timely submitted, as compared to language requiring a bid to be received “before” 11:00 a.m.

We need not address the argument regarding the time stamp on the video footage. The time stamp on the bid itself shows the time of bid submission to the minute, 11:02. The original IFB stated, “[i]n order to be eligible for consideration, bids must be received at City Schools Office of Procurement no later than 11:00 am local time, Thursday, May 23, 2019 in Room 401.” As modified, BCPS changed the bid deadline to “Thursday, July 25, 2019 at 11:00 a.m.” The strict construction and application of procurement requirements provides for uniform treatment of bidders and prevents confusion and disagreement as to the applicability of the procurement process or timeliness of the submission of bids under varying factual circumstances. *William F. Wilke, Inc. v. Dep’t of Army of U. S.*, 357 F. Supp. at 994. Here, BCPSS established the precise deadline for bid submission as 11:00 and the date stamp on the bid of 11:02 is evidence that Appellant submitted the bid after the deadline.

Finally, the Appellant argues that the local board’s decision is illegal because it is “based on new facts that BCPS submitted for the first time as a part of its Exception Denial. . . .” (Appeal, pp. 2-3). The evidence objected to by Appellant is as follows: (1) that four BCPS personnel could attest that Ms. Kinard was promptly provided with clear instructions on the location of Ms. Graff’s desk and the manner for filing the bid; (2) the time stamp on Ms. Kinard’s visitor badge; (3) Ms. Graff’s allegation that she did not say it was 10:56 a.m. when Ms. Kinard arrived at her desk; and (4) Ms. Graff’s allegation that she witnessed Ms. Kinard arrive after 11:00 a.m. (Appeal at pp. 6-7). Appellant maintains that the local board policy does not allow for the presentation of additional evidence after exceptions are filed. The local board argues that the procurement regulation, DJA-RA, is silent regarding the admission of additional evidence and, thus, it is allowed given the informality of the administrative process. (Response, pp.5-6). Assuming *arguendo* that the BCPS procurement regulation does not allow for the introduction of additional evidence after exceptions have been submitted, even if all of the information listed above was disregarded, the fact still remains that the Appellant has the burden of proof in the appeal and has not submitted any evidence to demonstrate that she timely submitted her bid.

CONCLUSION

For the reasons stated above, we affirm the decision of the Baltimore City Board of School Commissioners finding that the Interim Director of Materials Management properly determined that Appellant did not timely submit its bid for IFB-19090.

Signatures on File:

Warner I. Sumpter
President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

ABSTAINED:

Jean C. Halle
Vice-President

February 25, 2020