



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ed Kocharian & Company, Inc.

File: B-271186

Date: April 1, 1996

Herman M. Braude, Esq., and Robert D. Windus, Esq., Braude & Margulies, for the protester.

Lynn J. Bush, Esq., Diane D. Hayden, Esq., and George N. Brezna, Esq., Department of the Navy, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's acceptance of late bid is denied where the record establishes that the hand-carried bid was received by the agency prior to the time set for bid opening; the paramount cause for the bid's late receipt at the office designated for bid opening was the inappropriately locked door to the office designated for deposit of hand-delivered bids followed by the agency's mishandling of the bid after its receipt; and the integrity of the procurement system was not compromised by the agency's consideration of the bid.

DECISION

Ed Kocharian & Company, Inc. protests the award of a contract to PBM Mechanical, Inc. under invitation for bids (IFB) No. N62477-96-B-0020, issued by the Department of the Navy to replace chillers at the Naval Research Laboratory in Washington, D.C. The protester argues that PBM's bid was delivered late and should not have been considered for award.

We deny the protest.

The IFB stated that bid opening would be held at 2 p.m. on February 7, 1996. Bidders were to deposit all hand-delivered bids in the bid box of the Plans/Specifications office, located on the first floor of Building 212 at the Washington Navy Yard, 901 M Street, SE, Washington, D.C., prior to the time set for bid opening. Twenty-four bids were opened at the 2 p.m. bid opening, with Ed Kocharian submitting the apparent low bid of \$277,800. PBM's bid of \$242,999 was not opened at that time because it was not in the bid box in the Plans/Specifications office.

PBM's representative had arrived at Building 212 shortly before 12 p.m. on bid opening day. According to the Navy, PBM's representative tried to deliver the firm's bid to the Plans/Specifications office, but the door to the office was closed and locked. A sign on the door listing the office hours made no provision for the door to be closed at this time.¹ Another sign directed persons with emergencies to go to the contracts office, on the third floor, when the Plans/Specifications office was closed. PBM's representative went to the contracts office and encountered a Navy purchasing agent to whom he explained his dilemma. The purchasing agent took him to the contract specialist in charge of this bid opening. The contract specialist states that although she could have had the purchasing agent take PBM's representative downstairs to the Plans/Specifications office, unlock the door, and allow him to deposit PBM's bid in the bid box, she did not do so because the purchasing agent was on crutches. Instead, since she was in charge of the bid opening, the contract specialist told PBM's representative that she would accept the bid, take it with her to the bid opening, and deposit the bid in the bid box prior to bid opening. She time/date-stamped the envelope containing PBM's bid at 12:05 p.m. and states that she put the bid at her work station. However, she forgot to take PBM's bid with her to the bid opening. In light of the circumstances, the contracting officer subsequently determined that the government's actions were the paramount cause of the bid's late receipt and accepted the bid as timely submitted. Award to PBM has been suspended pending resolution of this protest.

Ed Kocharian argues that PBM was the paramount cause of the bid's late delivery, and that the bid should not have been considered. The protester contends that PBM's representative should have followed the IFB's instructions, declined to accept the contract specialist's offer to take the bid, and waited until he could personally deposit the bid in the bid box in the Plans/Specifications office.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. A late hand-carried bid can be considered for award if government mishandling after timely receipt at the agency is the sole or paramount cause for the bid's late receipt at the office designated for bid opening, and if consideration of the late bid would not compromise the integrity of the procurement process. Kelton Contracting, Inc., B-262255, Dec. 12, 1995, 95-2 CPD ¶ 254; Power Connector, Inc., B-256362, June 15, 1994, 94-1 CPD ¶ 369; John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419.

In determining whether a hand-carried bid was timely received by the agency, all relevant evidence, including statements made by government personnel, may be considered. Kelton Contracting, Inc., *supra*; Power Connector, Inc., *supra*. Here,

¹The sign stated that the office hours were between 7 a.m. and 3 p.m.

the evidence cited by the agency reasonably supports a conclusion that timely delivery of the bid to the agency was accomplished. The purchasing agent and contract specialist attest to the bid's receipt at approximately noon on February 7, 2 hours prior to bid opening, and the bid's envelope bears the time/date-stamp of 12:05 p.m. on that date.

Having established that the agency received the bid in a timely fashion, we must determine the relative responsibility for the late receipt of the bid in the Plans/Specifications office. In so doing, we look to all the circumstances surrounding its delivery and compare the actions of the government and the bidder to determine whether the bidder acted reasonably. Power Connector, Inc., supra; Dale Woods, B-209459, Apr. 13, 1983, 83-1 CPD ¶ 396. In our view, the record shows that PBM acted in a manner reasonably calculated to ensure the delivery of its bid before bid opening, and that the agency's actions were the paramount cause for the bid's late receipt at the location designated for receipt of bids.

PBM's representative arrived at the Plans/Specifications office approximately 2 hours prior to bid opening to deliver the firm's bid. He could not do so because the door was closed and locked, with no explanation and in seeming contravention of instructions posted on the door. In accordance with a sign on the door, PBM's representative went to the contracts office. Since the contract specialist to whom he explained his dilemma was in charge of this bid opening, he agreed to give her the bid in reliance on her assurances that it would be properly handled for timely receipt in the bid opening box. We think PBM's representative acted reasonably in proceeding to the contracts office, considering the signs posted on the door, and further reasonably relied upon the assurances of the person to whom he delivered the bid, the cognizant contract specialist in charge of this bid opening. See United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146; Baeten Constr. Co., B-210681, Aug. 12, 1983, 83-2 CPD ¶ 203. Under these circumstances, it is clear that the paramount cause of the bid's late receipt was the inappropriately locked Plans/Specifications office followed by the contract specialist's subsequent failure to take the bid with her to bid opening despite her assurances that she would do so. See Power Connector, Inc., supra; see also L.V. Anderson and Sons, Inc., B-189835, Sept. 30, 1977, 77-2 CPD ¶ 249.

Finally, the record establishes a reasonable chain of custody for PBM's bid after its receipt by the agency at 12:05 p.m., and, Ed Kocharian's speculation notwithstanding, shows that the bid was in the sole custody of the agency at the time of bid opening and thus could not have been changed by PBM. Therefore,

consideration of PBM's bid did not introduce any unfair advantage into the competitive process and thereby compromise its integrity. Kelton Contracting, Inc., supra; Power Connector, Inc., supra.

The protest is denied.

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