

DECISION

30023

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-216624

DATE: December 17, 1984

MATTER OF: Monthei Mechanical, Inc.

DIGEST:

A late hand-carried bid delivered to the bid opening room after the time set for bid opening may not be considered unless there is a showing that wrongful government action was the paramount cause of the late delivery.

Monthei Mechanical, Inc., protests the rejection of its hand-carried bid as late under invitation for bids (IFB) No. N62474-84-B-0927 issued by the Department of the Navy, Marine Corps Base, Camp Pendleton, California. We deny the protest.

The time set for receipt of bids was 10 a.m., September 18, 1984. The bid box in the Contracting Office, Building 2276, Marine Corps Base, Camp Pendleton, California, was designated as the place for the submission of hand-carried bids.

According to the protester, on September 18, 1984, its employee left her car in front of the door to building 2276 30 seconds before 10 a.m. As she opened the building door, she noticed that the bid box had been moved from its customary location near the building entry. When the employee asked the receptionist where the box was, the receptionist told her "You're too late," rather than giving her directions to the box location. Monthei's employee then searched the corridor where the last opening she attended had been held. Seeing no box, she returned to the receptionist, who directed her to the bid opening room. The presiding officer was reading opening remarks when Monthei's employee entered the room and attempted to insert Monthei's bid in the bid box, which had not yet been opened. A government representative placed her hand over the box

030817

opening and told the employee that she could not put her bid in the box because she was late. The employee protested that she was not late, that the bid box had been removed from the front office before 10 a.m. Noting that her watch read 30 seconds after 10 a.m., the employee asked for a superior to make the decision about the acceptance of Monthei's bid. The government representative left the room to check with a superior, returned and informed the employee that Monthei's bid would be accepted unopened.

In its report to our Office, the Navy states that it is customary to keep the bid box near the entry to building 2276. The box was moved from the entry to a nearby conference room shortly before bid opening, a customary practice, and bids were opened as scheduled at 10 a.m. The Navy has submitted statements from individuals present at bid opening to establish these facts. According to the Navy, Monthei has bid on 12 projects advertised by the Officer in Charge of construction in recent months and was familiar with bid opening procedures. Monthei, though, contends it was not aware of any policy of moving the bid box prior to the bid deadline. The Navy also reports that witnesses state Monthei's employee became hysterical upon entering building 2276 and did not listen to people attempting to give her directions.

Monthei contends that, under the circumstances, its bid must be treated as timely even though it may have been delivered to the room in which bids were being opened a few seconds after the bid deadline. According to Monthei, hand-delivered bids which arrive late at the place for bid opening are properly rejected, except where the government has failed to adequately specify the room where the opening would take place or has changed the location for the bid depository without giving adequate instructions to bidders of the new location for the bid depository. Monthei feels the delivery of its bid falls under this exception.

Our Office has held that a late hand-carried bid may be considered where lateness was due to improper action of the government and where consideration of the late bid would not compromise the integrity of the competitive procurement system. Saint Louis Tuckpointing and Painting Co., Inc., B-212351.2, Nov. 18, 1983, 83-2 C.P.D. ¶ 588. However, a late bid should not be evaluated if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering a hand-carried bid to the proper place by the proper time, even though

lateness may have been caused, in part, by erroneous government action or advice. See Priest & Fine, Inc., B-213603, March 27, 1984, 84-1 C.P.D. ¶ 358; Avantek, Incorporated, 55 Comp. Gen. 735 (1976), 76-1 C.P.D. ¶ 75.

Upon a review of the circumstances here, it appears that a significant cause of the late delivery of Monthei's bid was the failure of Monthei's representative to allow sufficient time for delivery. Arriving in the building parking lot 30 seconds before the bid opening deadline does not ensure sufficient time for delivery. Furthermore, according to the Navy's report to our Office, Monthei's representative did not listen to the people attempting to give her directions. We therefore cannot conclude that late delivery of Monthei's bid resulted from such extraordinary delay or misdirection by government personnel as to permit its exception from the rule that a late bid may not be considered for award.

Monthei cites a number of our previous decisions in support of its position that the tender of its bid was improperly refused. We think Monthei's reliance on these cases is misplaced because there are significant factual differences.

In 34 Comp. Gen. 150 (1954), we permitted consideration of a late bid where there had been an extraordinary delay caused by government personnel at the Base Security Office. The bid was delivered to the Supply Office, prior to the designated bid opening time, was stamped as timely received by a clerk, and returned to the bidder, who arrived at the bid opening area 3 minutes late. The situation in Monthei's case is distinguishable because Monthei has not proven that it was subject to any extraordinary delay caused by government personnel.

In LeChase Construction Company, B-183609, July 1, 1975, 75-2 C.P.D. ¶ 5, the bid opening room was changed without amending the solicitation, which contained three different room numbers. We determined that the inconsistency in the solicitation could have led to the late submission and sustained the protest.

In Dale Woods, B-209459, April 13, 1983, 83-1 C.P.D. ¶ 396, the bidder arrived at the building a half hour before bid opening, but arrived at the bid opening room late. The room had been changed from that listed in the solicitation without amending the solicitation. We concluded that the bidder acted reasonably and diligently and did not significantly contribute to his late arrival; the paramount cause for the bidder's late arrival was the change of the bid opening room. In Monthei's case, the solicitation did not

B-216624

incorrectly list the place for bid opening, and its representative arrived at the building only 30 seconds before bid opening, as compared to the half hour allowed by the bidder in Dale Woods.

In Saint Louis Tuckpointing and Painting Co., Inc., B-212351.2, supra, the bidder's representative arrived at the building 5 minutes before the time scheduled for bid opening, was initially given insufficient directions by an agency guard, later redirected by the same guard and arrived at the bid opening room 40 seconds late. We concluded that the bidder had ample time to deliver the bid if adequate information had been given by the agency, and the paramount cause for late delivery was the agency's failure to adequately direct bidders once they arrived at the general location. Again, we find no support for Monthei's position in the holding of this case, since here the Navy reports that Monthei's representative did not listen to people attempting to give her directions. Similarly, we find no support for Monthei's position in Baeten Construction Co., B-210681, Aug. 12, 1983, 83-2 C.P.D. # 203, where the paramount cause for the bid being late was misdirection of the bidder by an authorized representative of the contracting officer.

The protest is denied.

for 
Comptroller General
of the United States