



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Four F Corporation

File: B-225523

Date: April 3, 1987

DIGEST

Although late receipt of bid modification was due to agency's providing bidder with incorrect telex number, modification may not be considered where bidder, after learning of bidding results before modification was received by agency, instructs Western Union to deliver the modification; this gave bidder impermissible opportunity to decide whether to submit its modification and accept award.

DECISION

Four F Corporation protests any award to Hill Brothers Construction Company, Inc., under invitation for bids (IFB) No. DACW29-86-B-0150, issued by the Corps of Engineers for enlargement of a levee. Four F, the apparent low bidder, contends that the bid modification submitted by Hill after bid opening, which makes Hill the low bidder, was improperly accepted by the agency since it was received late. We sustain the protest.

Bids were opened at 2:00 p.m. on October 22, 1986. Four F submitted the apparent low bid price of \$1,856,225 and Hill the seventh low bid price of \$2,151,575. At 4:08 p.m. the same day, the contracting agency received a hand-delivered telegram that lowered Hill's price to \$1,841,575. Hill had-- at approximately 10:15 a.m. on October 22--telephoned an agency contract specialist and requested the agency's telex number so that Hill could telex a modification of its bid price to the agency. The contract specialist erroneously gave Hill the agency's telecopier number. At approximately 10:33 a.m. that day, Hill gave Western Union the agency's "telex" number and its bid modification for transmission. About half an hour after bid opening, Hill telephoned the contract specialist, was told the three low bids received, and learned that its modification had not been received. Subsequently, after being informed by Western Union that it had not been possible to transmit the modification, Hill instructed

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Western Union to hand deliver the modification to the agency. This delivery was made at 4:08 p.m. Notwithstanding Four F's objection, the agency--after determining that the failure to give Hill the correct telex number was the paramount cause of the late receipt--decided to accept the Hill modification even though it had been received late.

Four F contends that there was no basis on which the Corps properly could consider Hill's late bid modification. Four F first argues that the standard late bid clause in the IFB permits a telegraphic bid modification that is received after bid opening, but before contract award, to be considered only if the government determines that the late receipt was due solely to government mishandling after receipt at the government installation. That was not the case here, since Hill's attempt to transmit the modification was unsuccessful.

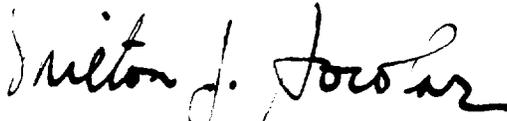
Nevertheless, we have held that a strict and literal interpretation of this clause should not be used to reject a bid modification where it would contravene the intent and spirit of that clause. Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD ¶ 331. Thus, a telegraphic bid modification received after bid opening may be considered where there was government mishandling in the process of receipt that was the paramount cause of the modification being late and the bidder did not gain the kind of unfair competitive advantage the clause was designed to prevent. Singleton Contracting Corp., B-215186, Oct. 29, 1984, 84-2 CPD ¶ 471. Here, we agree with the agency's conclusion that its communication to Hill of an incorrect telex number constituted government mishandling in the process of receipt and was the paramount cause of the modification being received late. Howard Management Group, B-221889, July 3, 1986, 86-2 CPD ¶ 28.

Although the paramount cause of the late receipt of the modification was the agency's erroneous communication to Hill, we nevertheless conclude that the modification should not have been considered because Hill was given an unfair competitive advantage. Specifically, when Hill called for the bid opening results, the contracting specialist advised Hill of the bids submitted, before Hill's modification was received by the Corps; as a result, Hill had the opportunity to decide, in view of the bids received, whether or not to submit its modification and accept the award. While we recognize that Hill's opportunity to reconsider its modification arose because of the Corps' actions, not its own, in our view that opportunity compromises the integrity of the procurement system. Compare Howard Management Group, B-221889, supra (no unfair advantage

where bidder was unaware that its modification was late until after it was received by agency). Further, our decision in The Standard Products Co., B-215832, Jan. 23, 1985, 85-1 CPD ¶ 86--in which we found that a late modification hand delivered by the bidder after bid opening should be considered--is not controlling, since there is no indication that the bidder in that case, like Hill here, was on notice of the other bidders' prices. Finally, the fact that Hill chose to submit its modification rather than withdraw it is not significant since it is the opportunity to decide whether to proceed, not the bidder's ultimate decision, which is detrimental to the integrity of the procurement system.

In view of our finding that the Corps improperly considered the late modification, we are recommending that award be made to Four F as the low bidder, if otherwise eligible.

The protest is sustained.

for 
Comptroller General
of the United States