

Doddard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Amfel Construction, Inc.

File: B-233493.2

Date: May 18, 1989

DIGEST

Hand-carried bid which was brought to the designated place for hand-carried bids and placed in the Navy's control at the exact time, 2 p.m., called for in the solicitation and prior to any declaration that the time for receipt of bids had passed is not late as the Federal Acquisition Regulation does not require that a bid be submitted prior to the time called for in the solicitation but rather not later than the exact time set for opening bids.

DECISION

Amfel Construction, Inc., protests the rejection of its bid as being late under invitation for bids (IFB) No. N62474-87-B-7688, issued by the Naval Facilities Engineering Command, Western Division, for hospital modification, Building 500, Naval Hospital, Oakland, California.

The protest is sustained.

Bid opening was scheduled for 2 p.m., on November 2, 1988. The IFB instructed that "all hand delivered bids must be deposited in the bid box of the Contract Office, Western Division, Naval Facilities Engineering Command (Code 02), Bldg. 208, 1st Floor, San Bruno, CA 94066-0720 prior to the time and date set for bid opening. Any bids submitted by hand after the time set for receipt will not be accepted."

Amfel contends that its employee arrived at the designated place for receipt of hand-carried bids at 1:59 p.m., but the bid envelope was too large to be placed in the time/date stamp machine on the bid box and no one was at the bid box to receive the bid. Amfel states that a Navy employee subsequently walked over to the Amfel employee, took the bid package, and then walked over to a nearby secretary's desk to request a piece of paper. Amfel states that since the secretary was on the phone it took in excess of one minute

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for the Navy employee to interrupt the secretary, get a piece of paper and return to the time clock by which time the paper was stamped 2:01 p.m.

The bid opening officer accepted Amfel's bid and opened it along with the two other bids received. Amfel's bid was found to be low. After an agency-level protest was filed by the second low bidder, R.J. Lanthier Company, the Navy rejected Amfel's bid as being late and awarded the contract to Lanthier.

The Navy has submitted affidavits from several of its employees as well as the two other bidders' representatives who attended the bid opening in support of the Navy's conclusion that Amfel's bid was late. The Navy contends that Amfel submitted its bid after the exact time specified for receipt. In this regard the bid recorder stated she was standing 5 feet from the bid box and could clearly see the bid box and the time clock of the time/date stamp which was on top of the bid box. She stated that two other bidders' employees were standing to her right 5 to 6 feet from the bid box. When the clock face showed 2 p.m., the bid recorder saw Amfel's employee come through both sets of doors and enter building 208 holding a bid envelope. The bid recorder stated that she approached Amfel's representative, took the bid from her, immediately walked over to a secretary's desk 10 feet away and without speaking to her, took a piece of paper from the top of her note pad, walked back to the time/date stamp and stamped in the piece of paper. The bid recorder stated that it took approximately 15 seconds to obtain the piece of paper and stamp it in at 2:01 p.m.

The two other bidders' representatives who declared they had observed both the time/date stamp clock and the Amfel employee's arrival in building 208 stated that Amfel's employee arrived about 20-40 seconds after the clock face "clicked" from 1:59 p.m. to 2 p.m. (the third low bidder's employee's affidavit) or 35 to 50 seconds after the clock face clicked to 2 p.m. (Lanthier's employee's affidavit).

The Federal Acquisition Regulation (FAR) provides that bids shall be submitted so that they will be received in the office designated in the invitation for bids not later than the exact time set for opening of bids. FAR § 14.302(a) (FAC 84-11). Bids received in the office designated in the invitation for bids after the exact time set for opening are "late bids." FAR § 14.304-1 (FAC 84-11).

Bids that are in the hands of the bid opening officer or any designated official by the scheduled opening time may be considered for award. See Hyster Co., 55 Comp. Gen. 267 (1975), 75-2 CPD ¶ 176. The time when a bid is submitted is determined by the time that the bidder relinquishes control of the bid. Chestnut Hill Construction, Inc., B-216891, Apr. 18, 1985, 85-1 CPD ¶ 443.

As a general rule, a bidder is responsible for delivering its bid to the proper place at the proper time. Late delivery of a bid requires its rejection, even if it is the lowest bid, in order to maintain confidence in the integrity of the government procurement system. Hi-Grade Logging, Inc., B-222230, B-222231, June 3, 1986, 86-1 CPD ¶ 514. Generally, only a time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by the government installation is acceptable evidence of the receipt of a bid by the government. See FAR § 14.304(c). We have held, however, that where the issue is whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. Boniface Tool & Die, Inc., B-226550, July 15, 1987, 87-2 CPD ¶ 47. Statements by government personnel, for example, are competent evidence of the time of receipt. Id.

We need not decide whether Amfel's employee arrived at the bid box at 1:59 p.m., as the fact remains that the Navy admits that Amfel arrived there at 2 p.m. Although the Navy argues that for Amfel to have submitted its bid on time it must have submitted its bid at 1:59 p.m., our reading of the FAR does not lead us to this result.

While the solicitation contained both the phrases "prior to the time" and "after the time set for receipt," these phrases must be read consistent with the FAR, which states that a bid is late if received "after" the time set for opening. We have uniformly interpreted this and similar regulatory language as meaning that bids could be submitted up to the time the contracting or bid opening officer announces that the time set for bid opening has arrived. See, e.g., 40 Comp. Gen. 709 (1961); Hi-Grade Logging, Inc., B-222230; B-222231, supra; K.L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79. Here, the IFB stated that bid opening was scheduled for 2 p.m. Even though Amfel's bid was not stamped in until 2:01 p.m., the evidence shows that Amfel's bid was in the Navy's control at 2 p.m. when the Amfel employee handed it to the bid recorder. Since the bid opening officer had not declared the time for receipt of bids closed at that point, we find that Amfel's bid was not late despite the fact that it took the bid recorder until

2:01 p.m. to actually stamp the bid in. Cf. Chattanooga Office Supply Company, B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221, in which submission of bids by 10 a.m. was required but we found that a bid, delivered 15-30 seconds after 10 a.m. on the bid opening clock, was late because the bid opening officer had already declared bid opening time.

Accordingly, we conclude that Amfel's bid was timely received and should have been considered for award. We therefore sustain the protest, and recommend that the Navy terminate for convenience its contract with Lanthier and make an award to Amfel if otherwise proper.

Milton J. Foster
for Comptroller General
of the United States