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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R.J. Lanthier Company, Inc.--Request for
Reconsideration
File: B-233493.4
Date: September 28, 1989

DIGEST

Request for reconsideration of prior decision holding that a bid was improperly rejected as late when it was submitted at 2 p.m., the time called for in the invitation for bids for the submission of bids, is denied where protester restates arguments previously considered and request does not show that initial decision contained errors of fact or of law.

DECISION

R.J. Lanthier Company, Inc., requests reconsideration of Amfel Construction, Inc., B-233493.2, May 18, 1989, 89-1 CPD ¶ 477, in which we sustained Amfel's protest 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. We sustained Amfel's protest because Amfel's bid had been improperly rejected as late by the Navy. Lanthier requests that we reconsider our decision and find that Amfel's bid was properly rejected as late.

In its protest, Amfel contended that its employee arrived at the designated place for receipt of hand-carried bids at 1:59 p.m., for a bid opening scheduled at 2 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 stated 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 stated that since the secretary was on the phone it took in excess of one minute 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.

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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, Lanthier, the Navy rejected Amfel's bid as being late and awarded the contract to Lanthier.

In our prior decision we stated that 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, June 3, 1986, 86-1 CPD ¶ 514; 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 showed 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 found 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.

Lanthier, in its request for reconsideration, argues that Amfel was required to submit its bid prior to 2 p.m. Alternatively, Lanthier contends that Amfel was required to submit its bid no later than the exact time of 2 p.m., and not a second later. Finally, Lanthier argues that where a bid opening officer delays declaring or fails to declare the time for bid opening, it does not relieve bidders from their responsibility to submit their bid prior to or at the exact time of 2 p.m.

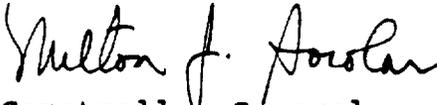
Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Sletager, Inc.--Reconsideration, B-233350.2, Apr. 18, 1989, 89-1 CPD ¶ 382.

After reviewing the record and Lanthier's request for reconsideration, we conclude that Lanthier has in essence repeated arguments made in the submissions filed under the initial protest. Lanthier's first contention is that bids

must be submitted prior to the time set for opening. However, as we noted in our earlier decision, bids are only to be rejected as late where received "after the exact time set for opening." FAR § 14.304-1.

Lanthier's alternative argument is that a bid may not be accepted one or more seconds past the moment the bid opening time has been reached regardless of whether the bid opening officer has declared the time for bid opening. We also examined this argument in our prior decision and concluded that if bid opening time is stated as 2 p.m. and the bid opening officer has not declared time for opening, as here, bids may be accepted during that time that the clock remains at 2 p.m. Neither the regulations nor the decisions cited by Lanthier require a contrary result. In this case, the time set for opening was 2 p.m. and as long as the clock read 2 p.m. and the bid opening officer had not yet declared the bid opening time, bids were to be accepted.

We affirm our prior decision.


for Comptroller General
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