

M. Formica



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Watson Agency, Inc.

File: B-241072

Date: December 19, 1990

Richard A. Cummings, Esq., Imhoff & Lynch, for the protester. Paul M. Fisher, Esq., Department of the Navy, for the agency. John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's acceptance of a late bid was proper where the failure of agency personnel to follow established procedures for receipt of express mail on weekends was the paramount cause of the late receipt.
2. Failure of bidder to complete representation in its bid regarding its corporate status for taxpayer identification purposes has no bearing on the material aspects of the bid and thus does not render the bid nonresponsive.
3. Since the Small Business Administration has conclusive statutory authority to determine small business status for federal procurement purposes, the General Accounting Office will not consider a size status protest.

DECISION

Watson Agency, Inc. protests the award of a contract to IBI Security Service, Inc. under invitation for bids (IFB) No. N62477-90-C-6374, a small business set-aside, issued by the Naval Facilities Engineering Command for armed guard services at the David Taylor Research Center, Acoustic Research Detachment, Bayview, Idaho. Watson contends that IBI's bid was received late at the bid opening location and, therefore, should have been rejected by the agency. The protester also argues that IBI's bid is nonresponsive, and that IBI is a large business and as such is ineligible for award.

We deny the protest in part and dismiss it in part.

The solicitation specified that bids were to be submitted by 2 p.m. on Monday, July 23, 1990, the time and date set for bid

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opening. It also stated that hand-carried bids would be received until that time at the depository located in Building 3A, Room 2A, of the David Taylor Research Center in Annapolis, Maryland.

The bids of IBI and another firm, Bell Security Services, both sent by Federal Express, arrived at the Research Center on Saturday, July 21. Although the Center is closed on weekends, the security guard on-duty accepted the bids in accordance with what the agency advises us are established procedures for the weekend receipt of United States Express Mail, Federal Express, and other express packages. These procedures state that express packages received during the weekend are to be deposited in a safe located in the guardhouse, and delivered on the morning of the first working day following their receipt to the Center's Classified Mails and Files Branch for distribution. The agency explains that after properly accepting the bids, the guard erroneously placed both in another, seldom used safe, also located in the guardhouse. The bids remained in this safe until Tuesday, July 24, the second working day after their receipt and the day after bid opening, when they were found by agency personnel as the result of an inquiry from IBI.

The agency determined that the bids had been received by the Research Center in sufficient time for their delivery to the bid opening room prior to the time set for bid opening, had the procedures for the receipt and delivery of express packages been followed. The agency concluded that the late delivery of the bids was due solely to government mishandling, and that the integrity of the competitive bidding system would not be compromised by the acceptance of the bids since both had been in the exclusive control of the government since their receipt on July 21.

The protester argues that IBI's low bid was received late and, therefore, should have been rejected by the agency.

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. Dakota Woodworks, B-233178, Jan. 12, 1989, 89-1 CPD ¶ 33. Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as hand-carried. Id. A late bid, hand-carried by a commercial carrier, can be considered for award if government mishandling after timely receipt at the agency was the sole or paramount cause for its late receipt in the bid opening room. Weather Data Servs., Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582.

We agree with the agency that its improper action was the paramount cause for the late receipt of IBI's bid. The improper action consisted of the guard's placing the bid in

the wrong safe and the agency's subsequent failure to remove the bid from the guardhouse on the morning of Monday, July 23, and deliver it to the Center's Classified Mails and Files Branch for distribution in accordance with agency procedures.^{1/} We find that but for this failure, IBI's bid would have been received prior to bid opening. We also note that the acceptance of IBI's bid did not compromise the integrity of the competitive system since it was out of the bidder's hands and in the custody of the agency at the time of bid opening.

The protester also contends that IBI's bid is nonresponsive because IBI did not complete a representation in section "K" of its bid, as required by the solicitation, concerning IBI's corporate status for the purposes of taxpayer identification.

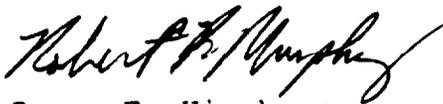
Responsiveness concerns whether a bidder has unequivocally offered to perform in conformity with all material terms and conditions of a solicitation. Federal Acquisition Regulation (FAR) § 14.301(a); Sage Assocs. Gen. Contractors, Inc., B-235497, Aug. 15, 1989, 89-2 CPD ¶ 141. The representation in section "K" of IBI's bid concerning its corporate status for taxpayer identification purposes has no bearing on the material aspects of the bid, and IBI's failure to complete this representation may be waived and corrected after bid opening as a minor bidding irregularity. MDT Corp., B-236903, Jan. 22, 1990, 90-1 CPD ¶ 81.

The protester's contention that IBI is a large business, and as such ineligible for award because the solicitation was issued as a small business set-aside, involves a determination of IBI's size status. The Small Business Administration (SBA) has conclusive statutory authority to determine matters of small business size status for federal procurement purposes. 15 U.S.C. § 637(b)(6) (1988). Accordingly, we will not

^{1/} The protester argues, based on the fact that the protest report contains a memo dated August 2, 1990, from the Center's security officer describing the procedures for handling weekend mail that, in fact, no such procedures existed when the bid was delivered in July. We do not agree that the date of the memo indicates that the procedures described in it did not exist before, especially when the memo refers to the procedures as "[n]ormal practice." Further, the report contains another memo dated January 22, which sets forth a nearly identical procedure for weekend deliveries. In any event, there is no requirement that the agency have established written procedures for handling bids, only that it ensure timely delivery to the designated bid opening location. See Hans Olsen Egg Co., Inc., B-235085, July 24, 1989, 89-2 CPD ¶ 75.

consider this issue. Bid Protest Regulations, 4 C.F.R.
§ 21.3(m)(2) (1990); Expertware, Inc., B-231629, July 13,
1988, 88-2 CPD ¶ 45.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel