



Comptroller General
of the United States

Washington, D.C. 20548

145605

Decision

Matter of: General Engineering Corp.

File: B-245476

Date: January 9, 1992

John R. Keys, Jr., Esq., and Cathy L. Burgess, Esq.,
Winston & Strawn, for the protester.
W.L. Bruckner, Esq., Corona, Balistreri & Ramseyer, for
H.B. Mac, an interested party.
John J. Mahon, Esq., Department of the Army, for the agency.
James M. Cunningham, Esq., and Paul I. Lieberman, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where the bid opening officer received a hand-carried bid after declaring the arrival of the bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

DECISION

General Engineering Corp. (GEC) protests the rejection of its bid as late under invitation for bids (IFB) No. DACW17-91-B-0007, issued by the U.S. Army Corps of Engineers, St. Croix Resident Office. The Army issued the IFB for the construction of a 5 million gallon water storage tank, pump station, and associated works at Kingshill, St. Croix.

We deny the protest.

The IFB required that bids be submitted by 11 a.m., August 27, 1991, at the Army's St. Croix Resident Office. At 11 a.m., as indicated by the clock on the wall of the bid opening room, the Army's bid opening officer announced that no more bids would be accepted. After allowing each bidder present to introduce himself, the officer then "pulled out the first bid document, reading aloud the required documents to be included." Subsequently, GEC's representative appeared at the bid room and, according to GEC, made his presence known to the bid opening officer before any pricing information had been read to the bidders. The bid opening

officer states that the time of this appearance was "almost 11:05 AM," as determined by the wall clock of the bid room. However, according to the watch of an Army civil engineering technician, who was also in the bid room when the GEC representative first appeared with its bid, the time was 10:59 and approximately 45 seconds a.m.¹ The bid opening officer rejected GEC's bid as late but nevertheless kept GEC's unopened bid. The Army subsequently determined that the bid room clock was ahead of St. Croix's "official phone number standard time" by 1 minute and 29 seconds, or ahead of St. Croix's time standard radio broadcast by 1 minute and 37 seconds. According to GEC it has ascertained that the bid room clock was 3 minutes faster than the time indicated by the "local telephone company as well as the San Juan airport."

GEC primarily argues that its bid was timely based on the inaccuracy of the bid room clock time and its representative's appearance in the bid room before 11 a.m. as established by the time indicated on the civil engineering technician's watch.

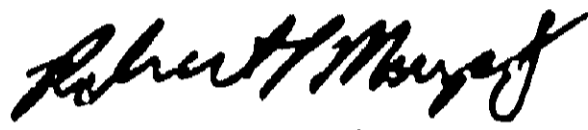
Under Federal Acquisition Regulation § 14.402-1(a), the bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. The bid opening officer's declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. Swinerton & Walberg Co., B-242077.3, Mar. 22, 1991, 91-1 CPD ¶ 318. Here, the Army's bid opening officer used the clock in the bid opening room to determine that the time set for bid opening had arrived. Although GEC argues that the officer made no formal declaration that this clock would be used, FAR § 14.402-1(a) does not require such a declaration. There is also no regulatory requirement that the bid opening officer verify the accuracy of the bid opening room clock with an independent time source prior to using the bid opening room clock to determine the time for bid opening. See K. L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79, where the rejection of a bid as late was proper even though an available telephone time source was not used to verify the accuracy of the bid room clock, and the clock was shown, after bid opening, to be fast by about 3 minutes. Similarly, in Swinerton and Walberg, Co., supra, the

¹The civil engineering technician states that his watch was set approximately 5-6 seconds slower than the "time standard broadcast on a local radio station."

difference of a few minutes between the bid opening room clock and a telephone report, alleged to be the correct time, was not sufficient to render the declaration unreasonable.

In this case, we believe that the bid opening officer's determination that the time for bid opening had arrived based on the time shown on the bid opening room wall clock was reasonable because of the very small alleged variation between the wall clock and the actual time. The fact that the time on an attendee's watch differed by a few minutes, and that the agency subsequently determined that the wall clock was actually approximately 1 minute and 30 seconds faster than the locally broadcasted standard time does not render the determination unreasonable. Consequently, even if GEC's bid was delivered before the bid price had been read and it were the low bid, GEC's late bid could not properly be considered. Id.

We deny the protest.


for James F. Hinchman
General Counsel