



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wand Electric Inc.

File: B-250576

Date: January 22, 1993

Terence J. Burke, Esq., Harris, Beach & Wilcox, for the protester.

Timothy A. Beyland, Department of the Air Force, for the agency.

David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A hand-carried bid which is deposited in the bid box on time, but does not reach the bid opening room before bids are opened because the bid depository was not checked within a reasonable time prior to bid opening, is not a late bid and may be considered.

DECISION

Wand Electric Inc. protests the award made to W.J. Murray, Inc. under invitation for bids (IFB) No. F30636-92-B-A068, issued by Plattsburgh Air Force Base, New York. Wand argues that there is no conclusive evidence that shows Murray's bid was submitted prior to bid opening and, therefore, Murray's bid should have been rejected as late.

We deny the protest.

The IFB was issued on July 21, 1992. Bids for this solicitation and three others were opened on August 28, at 2 p.m. Approximately 15 to 20 minutes prior to opening, agency personnel sorted through the papers in the bid box which is located in the lobby of the contracting offices and is used for receipt of all bids. The agency personnel separated the bids that had been submitted for the four solicitations. A few minutes before bid opening, these bids for the four solicitations were given to an assistant to the contracting officer. The assistant carried the bids to the bid opening room.

The prices of the three bids for this solicitation were read by the contracting officer's assistant. After reading the low bid, he handed the bid to the contracting officer, who

examined it and announced to all attendees that there was a problem with the bid and that a determination concerning the bid's acceptability would be made at a later date. As the amount of the government estimate for the work was being read, Murray's president, who was present at the opening, questioned the failure to read his firm's bid. The contracting officer, after advising all persons in the bid opening room to remain in the room, returned to the bid box. Murray's bid was found in the bid box. The agency decided after bid opening to open that bid, notwithstanding its late receipt. The low bid was rejected as nonresponsive and award was made to Murray, the second low bidder. Wand protests the award to Murray.

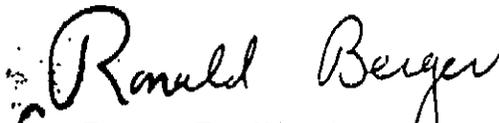
The agency's position is that the award was properly made. It states that while there is no installation time/date stamp on Murray's bid to show when it was received, the statement from an installation employee shows that an unknown young man was in the vicinity of the bid box at about 1:43 p.m. after bids had been removed from the bid box for bid opening. The employee was asked by the contracting officer if the man had a bid. She replied that she had not noticed one but that it was possible. The contracting officer also states that Murray's president was in the bid opening room just prior to, and also during, the bid opening and, thus, could not have left the bid opening room in order to deliver a late bid. The agency concludes that Murray's bid had to have been in the bid box prior to bid opening. Further, the agency asserts that Murray had no reason to believe that it could benefit from the submission of a bid after hearing the bid prices submitted because another bidder had submitted a price lower than Murray's bid and Murray did not know the low bid subsequently would be rejected. Accordingly, the agency accepted Murray's bid because the agency concluded that the bid's late receipt by the contracting officer was due to government mishandling after its receipt at the government installation. Performance of the contract has been suspended pending our decision on the protest.

The protester argues that the timeliness of a bid's receipt at the installation must be established before the government mishandling exception can be invoked. The protester argues that there is no conclusive evidence independent of Murray's statements to prove that the bid was received timely at the installation. For example, the statement of the other agency employee does not identify the person that was seen near the bid box as Murray's president, thereby leaving open the possibility that the president could have delivered an untimely bid later, and does not even establish that the person was delivering a bid.

In considering the question of whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. The evidence is not limited to a time/date stamp on the bid or other documentary evidence. Santa Cruz Constr., Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7. Statements by government personnel are competent evidence of the time of receipt. Bracco Constr. Co., B-222132, May 5, 1986, 86-1 CPD ¶ 433.

We believe the evidence in this case is sufficient to permit the acceptance of the Murray bid. First, an installation employee saw a person in the vicinity of the bid box at approximately 1:43 p.m., which is consistent with the company president's statement regarding when he delivered Murray's bid. Second, Murray's president was continuously observed by an agency official in the bid opening room prior to the bid opening time until he objected to the failure to read his firm's bid. Thus, he could not have delivered the bid into the depository after bid opening was declared. Third, as the agency points out, at the time Murray's president objected to the failure to announce its company's bid, he knew his bid was not low and would have had to foresee the rejection of the apparent low bid. Finally, it is inconceivable that the bidder could have foreseen the negligent failure of the contracting personnel to check the bid box just prior to bid opening, especially when a person, who might have had a bid, had just been seen in the vicinity of the bid box. While an employee of Murray's might have been listening outside the bid opening room so as to submit a low (and late) bid, we believe that under the circumstances, it is illogical to hypothesize such abuse, dependent as it is on the unforeseeable failure of agency personnel to check the bid box just prior to bid opening. All-States Railroad Contracting, Inc., B-216048.2, Feb. 11, 1985, 85-1 CPD ¶ 174. Here, unlike Free State Builders, Inc., B-184155, Feb. 26, 1976, 76-1 CPD ¶ 133, and other cases cited by the protester, we think the evidence of the timeliness of Murray's bid, taken as a whole, is persuasive.

The protest is denied.


for James F. Hinchman
General Counsel