



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Reliable Builders, Inc.
File: B-249908.2
Date: February 9, 1993

R.G. Feliciano for the protester,
James A. Sparks, Esq., and Diane Hayden, Esq., Department of
the Navy, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Hand-carried bid which was brought to the designated location for hand-carried bids is not late, although it was time/date stamped at 2:01 p.m., where the record shows that the bidder relinquished control of the bid to the appropriate agency official by 2 p.m., the exact time called for in the solicitation, and prior to the bid opening officer's declaration of the time for bid opening.

DECISION

Reliable Builders, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. N62766-88-B-0281, issued by the Naval Facilities Engineering Command, Department of the Navy, for whole house repair and improvement at the Naval Communications Area Master Station, in Barrigada, Guam.

We sustain the protest.

Bid opening was scheduled for 2 p.m. (Guam Time), August 11, 1992, and the IFB provided that hand-carried bids were to be delivered to the ground floor rear of Building 101 of the Navy Public Works Center, Guam Complex. The IFB also provided that the only acceptable evidence to establish the time of receipt at the government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

The precise events surrounding the bid opening are disputed. According to the protester, its representatives entered the bid receiving area approximately 12 minutes before the bid

deadline and submitted its bid 3 minutes before the 2 p.m. deadline, at which time all of the contractors were waiting in the bid receiving area. The receiving clerk took the bid and asked Reliable's representatives if they had heard her call for bids to be submitted. Reliable's representatives stated that they had not heard her call, but indicated that there were still 3 minutes until bid opening according to their timepieces. Reliable's representatives estimate that this exchange took approximately 45 seconds. The receiving clerk then walked to the other end of the counter to where the time/date stamp is located and stamped the bid. Reliable's representatives estimate that this took approximately 15 to 20 seconds. Reliable's representatives state that they then heard the call to proceed to the bid opening room and they proceeded there with the other participating bidders. Reliable points out that this sequence is supported by the fact that one of its representatives was able to procure a seat in the crowded bid opening room, while other bidders' representatives had to stand. Reliable has also submitted affidavits of other bidders' representatives which state that Reliable's representatives were in the bid opening room and one of them was seated when the bid opening officer stated that it was "now 2 p.m." and time for the bid opening of two solicitations.

The bid opening officer asserts that after he had retrieved the bid box and finished reading the bid opening statement, the receiving clerk entered the bid opening room and placed an envelope on the table in front of him.¹ The bid opening officer states that at that time he did not open Reliable's bid, which the receiving clerk had placed in front of him, because he noted that the time/date stamp indicated that it had been received at 2:01 p.m. When Reliable's representatives pointed out that their bid had not been opened, the bid opening officer informed them that their bid was time/date stamped at 2:01 and was therefore late. Reliable objected that the agency's time/date stamp was incorrect.

After bid opening, agency officials verified the time on the time/date stamp with the local time information, and determined that the time/date stamp was 6 minutes fast. After the agency determined that the time/date stamp was incorrect, and that Reliable's bid was timely, Reliable's bid was accepted and determined to be the apparent low bid.

¹According to the bid opening officer, Reliable's representatives entered the bid opening room behind the receiving clerk.

In response to a protest filed with our Office by Martech USA, the apparent second low bidder, alleging that Reliable's bid was late, the Navy reviewed its earlier determination and rejected Reliable's bid as late. Martech then withdrew its protest, and the agency made award to Martech on September 29, 1992. This protest followed.

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. Federal Acquisition Regulation (FAR) § 14.304(c). However, where the issue is whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. Bracco Constr. Co., B-222132, May 5, 1986, 86-1 CPD ¶ 433.

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. Amfel Constr., Inc., B-233493.2, May 18, 1989, 89-1 CPD ¶ 477. The time when a bid is submitted is determined by the time that the bidder relinquishes control of the bid. Carothers Constr., Inc., B-235910, Oct. 11, 1989, 89-2 CPD ¶ 338. Thus, the dispositive question is when Reliable relinquished control of its bid in relation to the bid opening officer's declaration of the time for receipt of bids, since bids are timely submitted up to the time the bid opening officer announces that the time set for bid opening has arrived. Id.

While Reliable's bid was not stamped in until 2:01 p.m., the record establishes that Reliable's bid was in the control of the receiving clerk at 2 p.m. Reliable's bid is time/date stamped later than when Reliable's representative handed the bid to the receiving clerk because of the delay associated with their discussion, which took place after the clerk received the bid, and before she walked to the other end of the counter to time/date stamp the bid. The agency's version of the events surrounding the bid opening differs in numerous particulars from that of the protester, particularly with respect to when Reliable's representatives and its bid moved into the bid opening room from the receiving area. However, while the bid opening officer states that the receiving clerk handed him Reliable's bid "subsequent" to the bid opening officer's declaration of time, no agency official disputes that Reliable's bid had

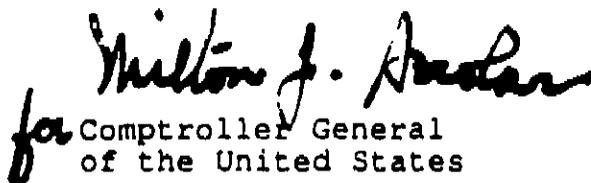
been handed to the receiving clerk before the bid opening officer declared time.

Instead, the agency argues that the time/date stamp is dispositive, and that the receiving clerk did not have custody of the bid until after the receiving clerk had declared that it was 2 p.m. As to the first argument, as noted above, with respect to the question of whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. As to the receiving clerk's announcement of time, FAR § 14.402-1(a) reserves the decision as to when the time set for bid opening has arrived for the bid opening officer. Here, the bid opening officer properly declared time when he commenced the bid opening, thus, any earlier reference to the time for bid opening by the receiving clerk was without effect. Since the bid opening officer had not yet declared the time for bid opening when Reliable's bid was relinquished to the receiving clerk, Reliable's bid was not late despite the fact that the receiving clerk time/date stamped Reliable's bid in at 2:01 p.m. Amfel Constr., Inc., supra. Additionally, we note that the agency itself determined that the time/date stamp was 6 minutes fast when it compared the time/date stamp to the local time information.

In sum, it is clear from the record that Reliable's bid was placed in the hands of the designated agency official well before it was actually 2 p.m., and some time before the bid opening officer declared it to be 2 p.m. Accordingly, we conclude that Reliable's low bid was timely received and should have been considered for award.

By separate letter of today to the Acting Secretary of the Navy, we are recommending that the Navy terminate for convenience its contract with Martech and make award to Reliable Builders, if otherwise appropriate. Further, the protester is entitled to recover the reasonable costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1992). Reliable Builders should submit its certified claim for protest costs directly to the Navy within 60 working days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.


for Comptroller General
of the United States