



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Power Connector, Inc.

File: B-256362

Date: June 15, 1994

Joel R. Feidelman, Esq., Anne B. Perry, Esq., and James S. Kennell, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

James L. Ropelewski, Esq. and Jonathan Cramer, Esq., Federal Prison Industries, Inc., Department of Justice, for the agency.

Jacqueline Maeder, Esq., Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's acceptance of a late bid is denied where preponderance of the evidence in the record indicates that the hand-carried bid was delivered to agency on time, government's actions were the paramount cause of the bid's late receipt in bid opening room, and the integrity of the procurement system would not be compromised by consideration of the bid.

DECISION

Power Connector, Inc. protests the award of a contract to General Connector, Inc. under invitation for bids (IFB) No. 1PI-B-0800-94, issued by UNICOR, Federal Prison Industries, Inc. (FPI), Department of Justice, for unassembled electrical connector components. The protester contends that General Connector's bid was delivered late and should not have been considered for award.

We deny the protest.

The IFB contemplated the award of a requirements contract for a base year and 4 option years, and scheduled bid opening for 1 p.m. on December 27. The solicitation set forth two addresses for delivering bids--one for bids submitted by mail and one for bids which were hand-carried, such as those delivered by commercial carriers. Bidders were instructed to deliver hand-carried bids to the bid depository located at 311 First Street, N.W., Washington, D.C., and to address mailed bids to:

Dept. of Justice, Federal Prison Industries
320 First Street, NW--Procurement Division
Washington, D.C. 20534-0001

The buildings at 311 and 320 First Street are across the street from one another.

At the bid opening on December 27, a single bid was received from Power Connector in the amount of \$649,500. General Connector's bid, dated December 22, and sent by Federal Express, in the amount of \$641,525, did not arrive in the procurement division office until after the time scheduled for bid opening. The package had been addressed to 320 First Street--not 311 First Street, the address indicated for hand-carried bids. There were stickers attached to the inside and outside envelopes which indicated that a bid was enclosed, and gave the solicitation number and the date and time of bid opening.

According to FPI, General Connector's bid was delivered by Federal Express to the main mail room in the building at 320 First Street at 8:28 a.m. on December 27 and delivered to the procurement division through the agency's internal mail-handling system. Based on a Federal Express tracking sheet indicating that an FPI mail room employee signed for the bid at 8:28 a.m. on December 27, the agency's logs showing receipt in the building at 311 First Street on December 27, and the agency's routine mail delivery procedures, the contracting officer determined that General Connector's bid could legally be considered for award. Upon being advised of this determination, Power Connector filed this protest.

Citing our decision Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 CPD ¶ 332, the protester maintains that the records of commercial carriers showing delivery to the agency's installation prior to bid opening are insufficient to establish that the bid was received by the agency prior to bid opening and argues that, therefore, the agency could not legally consider the late bid. More specifically, the protester contends that, in the absence of other documentary evidence, FPI cannot rely on the Federal Express tracking sheet to establish timely receipt of the bid.

The issue to be resolved, initially, is whether there is sufficient evidence to establish that General Connector's hand-carried bid was received by the agency prior to bid opening. Such a bid, subsequently delivered late to the bid opening room, can be considered for award only if government mishandling after timely receipt at the agency was the paramount cause for its late receipt in the bid opening room and if consideration of the bid would not compromise the integrity of the procurement process. John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419; Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. While the protester is correct in asserting that commercial carrier

records standing alone may not serve to establish the time of delivery to the agency, they may be considered if the record contains corroborating relevant evidence, including statements by government personnel. See Santa Cruz Constr., Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7.

FPI has submitted several undisputed pieces of evidence to our Office supporting a conclusion that timely delivery to the agency was accomplished. The Federal Express tracking sheet shows delivery to the mail room at 320 First Street at 8:28 a.m. on December 27. The record also shows that the package was subsequently listed on an Incoming Log of Controlled Mail for delivery to the resources division on the sixth floor of the building at 311 First Street. This log is prepared by personnel in the mail room and contains five entries in addition to the entry for General Connector's bid. FPI reports that there are two regular morning mail deliveries between the buildings, at 9:30 and 11:30 a.m. The supervisor of mail operations, in an affidavit to our Office, states that any package addressed to FPI, as here, and received in the morning would be delivered from the 320 First Street building to the 311 First Street building by noon. The record shows that the package was delivered on December 27 to 311 First Street and that a secretary in the corporate management division, located on the sixth floor of that building, signed the log for that package. The secretary in the corporate management division subsequently placed the package on the desk of a secretary in the resources division, also located on the sixth floor, who then redirected the package to the procurement division on the seventh floor of the building. The procurement division log of incoming mail shows that the package was received on December 27 and the procurement division secretary recalls receiving it at about 1:30 p.m.

We believe the evidence in this case, taken as a whole, supports FPI's conclusion that the bid was delivered to the agency prior to bid opening. Contrary to the protester's allegation, timely receipt of General Connector's bid package does not rest on only the Federal Express tracking sheet. Rather, receipt of the bid package at approximately 1:30 p.m. in the procurement division on the seventh floor of the building at 311 First Street is consistent with the agency's routine internal mail procedures and the fact that the package was delayed en route to the procurement division because it was misdirected by main mail room employees and had to be redirected to the procurement office. The preparation of the log which appears to have been incident to either the 9:30 or the 11:30 a.m. routine mail delivery, and the transmission to two inappropriate offices across the street from the mail room before delivery to the procurement division by 1:30 p.m. indicates, in our view, that the bid must have been delivered to the agency in sufficient time prior to bid opening to permit timely transmission to the bid opening room. Under these circumstances, there is a

sufficient basis for concluding that General Connector's bid was received at the installation at 8:28 a.m. as indicated by the Federal Express records.

Because we have concluded that the bid was timely received by the agency, we must now determine whether government mishandling after timely receipt at the agency was the paramount cause for the bid's late receipt at the bid opening room and if consideration of the late bid would not compromise the integrity of the procurement process. John J. Kirlin, Inc., supra. In determining the relative responsibility for late receipt of a bid, we look to all the circumstances surrounding its delivery and compare the actions of the government and the bidder to determine whether the bidder acted reasonably. Id.; Dale Woods, B-209459, Apr. 13, 1983, 83-1 CPD ¶ 396.

Here, we believe General Connector acted in a manner reasonably calculated to ensure delivery of its bid before bid opening and that the agency contributed significantly to the bid's late receipt. Specifically, General Connector submitted its bid to Federal Express with sufficient time for delivery before the 1 p.m. bid opening. Indeed, the record shows that General Connector released its bid to Federal Express on December 23 for delivery prior to 10:30 a.m. on December 24. Because Federal Express could not complete delivery on December 24--a federal holiday--the package was delivered on December 27. Also, although the bidder misaddressed the bid package, the bidder marked its bid envelope as a bid and included on the bid envelope the solicitation number and the date and time of bid opening. Thus, the bid was clearly marked and, as discussed above, was received in the mail room in time to be handled under the established procedures for transferring mail across the street. Notwithstanding this notice as to the contents of General Connector's bid package and the need for some urgency and care in its delivery, agency personnel misdirected the package to the sixth floor of the building at 311 First Street rather than to the procurement division on the seventh floor. This misdelivery essentially negated the procedures the agency had in place to ensure timely delivery of mail across the street, effectively precluding delivery to the proper room until after bid opening. Under these circumstances, we find that FPI's acceptance of General Connector's bid was reasonable. See John J. Kirlin, Inc., supra.

Moreover, consideration of General Connector's bid would not introduce any unfair advantage into the competitive process and thereby compromise its integrity, since the agency has established a reasonable chain of custody for General Connector's bid and shown that the bid was in the sole custody of the agency at the time of bid opening and could not be changed by General Connector. John J. Kirlin, Inc., supra. We therefore believe that the agency's decision to

consider General Connector's bid was a reasonable one. To reach a contrary result would, in our view, cause the agency to unnecessarily forego a lower-priced bid.

The protest is denied.



for Robert P. Murphy
Acting General Counsel