

DOCUMENT RESUME

03006 - [A2073157]

[Untimely Hand-Carried Bid]. B-189022. July 20, 1977. 4 pp.

Decision re: Peter Kiewit Sons' Co.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of Engineers; Titan Midwest Construction Corp.

Authority: A.S.P.R. 2-402.1(a). A.S.P.R. 2-303.7. 55 Comp. Gen. 267. B-185544 (1977). B-182826 (1975).

Protest was made to the rejection of a hand-carried bid as being late. Protester relied on time as given by local telephone company which was slower than official Bureau of Standards time used by agency; consequently, hand-delivered bid was untimely and was not considered. That protester's late bid was erroneously opened does not vitiate requirement that award go to lowest responsible and timely bidder. Protest was denied. (Author/DJM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189022

DATE: July 20, 1977

MATTER OF: Peter Kiewit Sons' Company

DIGEST:

1. Hand carried bid delivered after bid opening officer announced bid opening time had arrived but prior to disclosure of other bids may not be considered on the basis that the protester's representative relied on erroneous time given by telephone company, which was slower than the Bureau of Standard's time relied upon by the bid opening officer.
2. The erroneous opening of a late bid does not justify disregarding the requirement that a contract award be made to the lowest responsible and responsive timely bidder.

Peter Kiewit Sons' Company (Kiewit) protests the rejection of its hand carried bid as late and the proposed award of a construction contract to Titan Midwest Construction Corp. (Titan) as the low responsible, responsive bidder. Invitation for Bids (IFB) No. DACA45-77-B-0042 was issued by the Corps of Engineers (Corps), Omaha District on March 16, 1977. Bid opening was scheduled for May 5, 1977, at 2:00 p.m., local time, at the Hilton Hotel Ballroom in Omaha, Nebraska.

Kiewit contends that it reasonably relied on the time given by the telephone company on its time and temperature line as the most readily available, accurate standard of "local time." By this measure of time, Kiewit urges that its bid was not late. However, the District Corps' Chief of the Advertising Awards Section (Chief) ascertained the exact time by calling the Bureau of Standards in Boulder, Colorado. At exactly 1:50 p.m., the Chief announced the time to those present in the ballroom. Commencing at 1:55 p.m., and each minute thereafter until 2:00 p.m., the Chief announced the time. At precisely 2:00 p.m., the Chief advised the District Engineer that the scheduled

B-189022

time for bid opening had arrived. The District Engineer announced to those assembled that it was 2:00 p.m., and that no other bids would be accepted. Shortly thereafter, the Kiewit representative entered through the back entranceway of the ballroom and deposited a bid envelope on the receiving table prior to the public disclosure of any other bid. Although the Kiewit low bid was opened by mistake and handed to the District Engineer, that officer announced that the Kiewit bid had not been delivered on time and that the apparent low bidder was Titan.

After the bid opening, the District Engineer advised the Kiewit representative that the correct time had been ascertained from the Bureau of Standards. The District Engineer called the Bureau of Standards from a pay phone in the lobby of the hotel. This "time check" revealed that the time used in determining the closing of bids was correct. Kiewit argues that it is reasonable for a bidder to rely on the time given over the time and temperature line as the correct "local time." Kiewit states that when its representative took his seat after entering the room the time on his watch was 2:00 p.m. Because Kiewit's representative handed in his bid shortly before he was seated, Kiewit argues that it fully complied with the requirement in the IFB that bids be received by 2:00 p.m. "local time."

In this connection the district manager for Northwestern Bell Telephone Company has submitted an affidavit stating that the time given by the company's time-quoting equipment is based on time obtained from the Naval Observatory. He states that the company utilizes two time-quoting machines, the second being a back up unit to accommodate callers when the primary machine is overloaded or not in working condition. Approximately one and one half hours after bid opening, this individual checked the accuracy of the telephone company's equipment with the Naval Observatory. He found that the time being quoted by the primary equipment was 7 seconds slow while the secondary equipment was 25 seconds slow.

B-189022

The Public Information Specialist at the Bureau of Standards, Boulder, Colorado has advised us that the Bureau's Boulder office operates a time giving service for the general public and that the Bureau coordinates its timekeeping with the Naval Observatory and with the International Bureau of Time in Paris.

It is undisputed that Kiewit relinquished its bid after the announcement by the District Engineer that the time for bid opening had arrived and that the correct time was obtained for this purpose from the Bureau of Standards. In this connection, Armed Services Procurement Regulation (ASPR) § 2-402.1(a) (1976 ed.) requires the bid opening officer to decide when the time set for bid opening has arrived and to so declare to those present at the bid opening. We have held that such a declaration is prima facie evidence of the time for bid opening and unless there is a clear record to contradict this evidence, the authorized declaration serves as the criterion of lateness. Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176. In this case we have no reason to question the correctness of the time utilized by the Government and it is clear that the time relied upon by Kiewit was not correct. Even though Kiewit reasonably, but unfortunately, relied upon incorrect time given by the telephone company and it relinquished its bid prior to announcement of bid prices, we believe this does not justify making an exception to the firm rule that bids may not be accepted subsequent to bid opening time. In this case the rule works to the financial disadvantage of both Kiewit and the Government but the purpose of the rule is to maintain the integrity of the competitive bid system and that purpose transcends the Government's loss of a lower price in the particular case. To accept Kiewit's late bid, even in these circumstances, would prejudice the low timely bidder and would subject the Government to liability for bid preparation costs. William F. Wilke, Inc., B-185544, March 18, 1977, 77-1 CPD 197.

Finally, although Kiewit's late bid was mistakenly opened and revealed contrary to ASPR § 2-303.7, this fact conferred no additional rights on Kiewit. Greer Hydraulics, Inc., B-182826, April 22, 1975, 75-1 CPD 249.

B-189022

Accordingly, the protest is denied.

R. J. K. 11/14
Deputy Comptroller General
of the United States