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DECISION



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

FILE: B-189835

DATE: September 30, 1977

MATTER OF: L. V. Anderson and Sons, Inc.

DIGEST:

Preservation of integrity of competitive bidding system requires that hand-delivered bid received late by contracting officer because of improper Government action, which was opened by contracting officer pending determination of acceptability, then rejected and returned to and retained by protester, not be considered for award since it cannot be determined that bid has not been altered subsequent to bid opening and agency return of bid to protester.

L. V. Anderson and Sons, Inc. (Anderson) protests the rejection of its bid submitted in response to invitation for bids (IFB) No. R6-18-77-44, issued by the United States Department of Agriculture, Forest Service, Willamette National Forest (WNF), Eugene, Oregon, on June 29, 1977.

Although the IFB provided that hand-carried bids would be received until 11 A.M. on July 27, 1977, in room 434, Federal Building in Eugene, WNF reports that it has long been the practice for WNF receptionists to receive hand-carried bids in room 100, and, upon receipt, to so notify the contracting officer. The contracting officer then picks up the bid before bid opening. WNF's report describes the circumstances surrounding the rejection of Anderson's bid as follows:

"* * * On the day in question, Mr. Anderson's bid was hand carried to the receptionist well before bid opening time and the Contracting Officer was notified. However, before the bid was picked up the receptionist receiving Mr. Anderson's bid was relieved by a second receptionist. The replacement receptionist also received a bid and also called the Contracting Officer advising that a hand carried bid had been received. The replacement receptionist, sitting at another desk, was not aware that the first receptionist has received

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Mr. Anderson's bid and the Contracting Officer, even though receiving two phone calls, was not aware that there were two bids in the reception area. He thought the second call was a reminder that there was a (single) bid to be picked up. Mr. Anderson's bid was not discovered by the Contracting Officer until after bid opening."

The contracting officer opened Anderson's bid, initially assuming that the bid could be considered because it was turned over to the Government 2½ hours before bid opening and was not timely received in room 434 because of Government mishandling. At a later time, however, the contracting officer determined that the rule of mishandling at the Government installation applied only to bids sent by mail. Consequently, he rejected Anderson's bid on the basis that it was not received in the place designated for receiving hand-carried bids until after bid opening, and returned the bid to Anderson. Anderson has apparently retained the bid since that time.

The contracting officer's decision to reject Anderson's bid was based on Federal Contracting Corporation, et al., 54 Comp. Gen. 304 (1974), 74-2 CPD 229, in which we held that a bid delivered to a Government installation by a common carrier 1 week prior to bid opening but received by the procurement office after bid opening could not be considered for award because the rules which allow for consideration of bids which are received late because of Government mishandling after delivery to the installation were applicable only to bids sent by mail or telegraph. Where, however, a late bid is hand-carried, we have generally allowed consideration of the bid when two tests are met: (1) bid lateness was due to improper Government action, and (2) consideration of the late bid would not compromise the integrity of the competitive bidding system. H. A. Kaufman Co., B-186941, March 4, 1977, 77-1 CPD 162; Hyster Company, 55 Comp. Gen. 267, 274 (1975), 75-2 CPD 176; LeChase Construction Corporation, B-183609, July 1, 1975, 75-2 CPD 5. Although, because of the very nature of hand-carried bids, most of the late hand-carried bid cases involve improper Government action which prevented the bid from timely coming into the Government's possession, the cases also involve situations in which there was timely receipt by the Government but untimely receipt by the office designated for receipt of bids. See, e.g., 51 Comp. Gen. 69 (1971), where the bid was placed in the wrong box because of the Government's failure to indicate clearly which was the box to be used as the bid depository.

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In this case we think the first test is clearly met. WNF and the protester agree that the bid was in the possession of the Government well before the 11 A.M. deadline for receipt of bids after having been delivered to the location established by long practice as the place for delivery of bids, and which was the same location to which other bids were delivered, and that the bid was not timely received in the place designated in the IFB solely because of the Government's handling of it.

For the second test to be satisfied, it must appear reasonably certain that the bidder did not have an opportunity to change its bid after the exposure of the timely bids received. Under the circumstances, however, and on the basis of the record before us, we cannot conclude that acceptance of Anderson's bid at this time would not involve a compromise of the integrity of the competitive bidding system. As mentioned above, the contracting officer opened Anderson's bid and subsequently returned it to Anderson. Unfortunately no record of the contents of the bid was made prior to its return. While we have been informally advised by the Forest Service that verification of the bid price is possible, it does not appear that the Government would be able to determine whether a resubmitted Anderson bid (our file contains only a copy of what is purported by the protester to be the original bid) would in fact be the bid originally ordered. In other words, since the original has for some time been in the possession of the protester, we know of no way of determining whether the bid has been altered in any way since it was returned to the protester. While concededly WNF's actions have created what may be an impossible task for the protester, we must conclude that preserving the integrity of the competitive bidding system precludes the protester's bid from being considered for award. See Free State Builders, Inc., B-184155, February 26, 1976, 76-1 CPD 133.

Accordingly, the protest is denied. By separate letter to the Secretary of Agriculture, we are recommending that steps be taken to avoid a recurrence of the unfortunate events that occurred in this case.


Acting Comptroller General
of the United States