

DECISION



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

FILE: B-207878

DATE: September 30, 1982

MATTER OF: MACETO, Inc.

DIGEST:

Where the only evidence of the time of bid submission is the conflicting statements of the protester and agency personnel, the protester has failed to prove that its bid was received at or before the exact time set for opening of bids.

MACETO, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 600-130-82 issued by the Veterans Administration Medical Center, Long Beach, California. The protester asserts that its bid was submitted prior to the time specified for receipt of bids and was improperly rejected as late. For the reasons discussed below, the protest is denied.

The IFB required bids to be submitted on or before 10:00 a.m., June 4, 1982, at which time the bids would be opened. The contracting officer and the recorder of bids report that on that day at approximately 9:59 a.m., a representative of the protester appeared at the bid opening office. The man walked into the bid opening room, sat down and proceeded to open his briefcase. The contracting officer then announced that the time was 10:00 and that no more bids on IFB No. 600-130-82 would be accepted. The man reacted by saying: "What, I just got here." He continued to open his briefcase, took out an envelope, and dropped it on the desk. By this time, the name and terms of the first bidder had been announced. The protester's bid was not opened and was not considered for award.

For its part, the protester says that its president called the contracting officer several days before the scheduled bid opening and requested that a solicitation package be mailed to it. The protester says that it did

023583

not receive the solicitation package through the mail as requested, but that its president obtained one in person on the day prior to the scheduled bid opening. Its president reportedly returned the package on June 4, 1982 at 9:55 a.m., but was told that the bid was late and would not be considered.

Federal Procurement Regulations (FPR) provide that bids received at the office designated in the invitation for bids after the exact time set for opening of bids are considered late, FPR § 1-2.303-1, and that a late hand-carried bid shall not be considered for award, FPR § 1-2.303-5. The regulations provide further that the bid opening officer shall decide when the designated time set for bid opening has arrived and shall so declare to those present. FPR § 1-2.402(a). Such a declaration by the bid opening officer must serve as the criterion for determining lateness in the absence of evidence indicating clearly that the declaration of time was incorrect. Eugene M. Keane, B-189184, August 8, 1977, 77-2 CPD 92.

In this case, the protester makes no claim that the contracting officer's declaration that 10:00 a.m. had arrived was incorrect. The protester asserts only that its representative returned the solicitation package at 9:55 a.m. on the day of bid opening. The protester does not indicate, however, whether its representative made a tender of its bid at that time or even announced his intention to do so. Against the assertion by the protester that its bid was returned at 9:55 we must weigh the statements of both the contracting officer and the recorder of bids that the protester's representative did not tender the protester's bid until after it was announced that the time was 10:00 a.m. and that no more bids would be received. Since the protester's assertion that its bid was returned at 9:55 is supported by no evidence other than its own statement, we conclude that the protester has failed to prove that its bid was received at or before the time set for the opening of bids. Tate Architectural Products, Inc., B-191316, May 22, 1978, 78-1 CPD 389. From the record before us, it appears that when the time set for bid opening was declared to have arrived, the protester's bid was still in the possession of its representative; its subsequent tender, even seconds later, was properly regarded as late. Hatch Construction & Paving, B-204810, November 4, 1981, 81-2 CPD 387.

Our cases recognize that while a bidder is responsible for the timely submission of its bid, a hand-carried bid that is received late may be accepted where the lateness is due to improper Government action and consideration of the late bid would not compromise the integrity of the competitive bid system. Hyster Company, 55 Comp. Gen. 267, 274 (1975), 75-2 CPD 176. This limited exception, however, does not apply in this case. If we accept as true the protester's allegation that it requested but did not receive a solicitation package more than one week prior to bid opening, and even assuming that this might indicate improper Government action, the protester has failed to offer any evidence that the lateness of its bid was in any way attributable to the Government's failure to mail a solicitation package as requested.

The protest is denied.

Harry D. Kim

Comptroller General
of the United States