

, 3/22/89



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Carothers Construction, Inc.  
**File:** B-235910  
**Date:** October 11, 1989

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### DIGEST

Protest alleging that agency improperly accepted late bid and bid bond is denied where record shows that bidder relinquished control of all required bid documents simultaneously with the bid opening official's declaration that the time for receipt of bids had passed.

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### DECISION

Carothers Construction, Inc., protests the proposed award of a contract to Barron Construction Company under invitation for bids (IFB) No. N62467-84-B-0153, issued by the Department of the Navy for construction of the Aviation Support Equipment Training Facility at the Naval Air Station, Millington, Tennessee. Carothers argues that the Navy should have rejected Barron's bid as late.<sup>1/</sup>

We deny the protest.

The IFB was issued on February 27, 1989, and following six amendments to the IFB, bid opening was scheduled for 2 p.m. on June 1, 1989. Barron submitted the low bid of the nine bids received; Carothers was the apparent second low bidder. The IFB required that each bidder submit, in a sealed envelope, an original and two copies of its bid, a set of

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<sup>1/</sup> We note that the agency claims Carothers is not an interested party to pursue its protest because it did not respond to an agency request to extend its bid during the pendency of its protest. Carothers has submitted documentation showing it sent a letter to the Navy extending its bid. In any event, Carothers' pursuit of its protest provides evidence of its intent to extend its bid acceptance period and to be bound by its bid if the protest were sustained. See Washington-Structural Venture, B-235270, Aug. 11, 1989, 89-2 CPD \_\_\_\_.

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representations and certifications for construction contracts, and a bid guarantee.

The events surrounding bid opening are at issue. We make the following findings based on a preponderance of the evidence in the record.<sup>2/</sup> Before the 2 p.m. deadline for receipt of bids, a representative of Barron placed an envelope in the bid box. Several minutes later, he requested that the contract specialist return the sealed envelope which was marked as the bid of Barron Construction. The contract specialist did so. The Barron representative returned several minutes later and attempted to modify the bid price by writing "Deduct \$40,000 . . . 1:54 p.m." on the outside of the bid envelope. After consultation with her supervisor, the contract specialist advised the representative that the modification on the envelope would be unacceptable. With 3 minutes remaining, the Barron representative called the president of Barron, who told him that he should open the envelope and modify Barron's bid by deducting \$40,000.

When the Barron representative then entered the bid opening room, and the contract specialist advised him that he had only 2 minutes before bid opening, the Barron representative began writing on the bid. With 5 seconds left before 2 p.m., the contract specialist told the representative that he had 5 seconds to go and to "hand me something." The Barron representative then handed her a copy of the bid of Barron Construction. The contract specialist states that when the second hand reached the 12, she "began to announce that the time for receipt of bids had passed." "At that time," she continues, the Barron representative "threw" the other copies of the bid (and other bid documents) on the table in front of her. The agency procurement clerk also states that the Barron representative placed the other bid documents on the table simultaneously with the contract specialist's declaration that time had passed. The record further shows that the documents on the table were picked up

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<sup>2/</sup> The record contains detailed affidavits from the participants at bid opening which have been fully and extensively discussed in the parties' briefs. In this connection, the agency has provided declarations of the two contract specialists present at the bid opening, the procurement clerk, who was also present, and the President of Barron. The protester has submitted affidavits prepared by several other contractors who were present at bid opening.

by another contract specialist who consolidated all the documents. The bid as modified by the Barron representative decreased Barron's price by \$40,000.

The protester states that a bid consists of those documents, including the bid guarantee, which the solicitation requires to be submitted at or before the time designated in the solicitation. Carothers contends that because Barron did not submit the bid guarantee to the contract specialist prior to the time for receipt of bids, that its bid should be rejected as late. Specifically, Carothers asserts that when the contract specialist called time, the wall clock in the bid opening room read 2:01. The protester argues that the contract specialist's "untimely declaration is not dispositive of lateness since it was per se unreasonable," since the official clock, not the bid opening official's declaration, should have been determinative of the time for receipt of bids.

While the record shows that a copy of Barron's bid which the representative handed to the contract specialist was timely received, there is no indication in the record that the set of papers handed to the contract specialist contained the required bid bond.<sup>3/</sup> Moreover, the contract specialist states that no check of the contents of the set of papers handed to her was made until after they had been consolidated with the documents which were placed on the table. Because the agency has provided no evidence to establish that the bid bond was included in the bid documents which were handed to the contract specialist prior to 2 p.m., the remaining issue is whether the bid documents which apparently contained the bid bond and which were placed on the table were submitted in a timely manner. We find that while the manner of submission of the bid bond was irregular, we agree with the Navy that the documents placed on the table were submitted simultaneously with the announcement that the time for bids had arrived, and that the bid was therefore properly accepted.

The bid opening officer's declaration of bid opening time is determinative of lateness unless it is shown to be unreasonable under the circumstances. Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221. The record shows that the contract specialist made several

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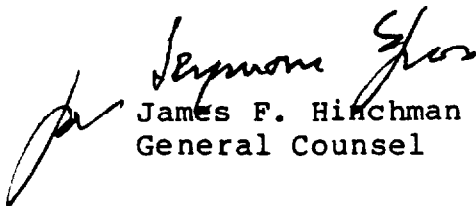
<sup>3/</sup> Where, as here, an IFB requires a bid guarantee, the requirement is material and the failure to furnish a bond conforming to the solicitation, by the time of bid opening, renders the bid nonresponsive. LTT Constructors, B-229062, Nov. 13, 1987, 87-2 ¶ 484.

announcements prior to bid opening that the deadline for receipt of bids was approaching. The record indicates that the contract specialist began to announce that the time for bid opening had arrived at 2 p.m. We note that while the protester alleges that the clock read 2:01 when Barron submitted its bid, the contracting officials familiar with the clock stated in the record that the minute hand on the clock has a tendency to move past the vertical 12 when the second hand reaches the exact hour. Consequently, the record shows that the bid opening officer's declaration of bid opening time was reasonable.

The time when a bid is submitted is determined by the time that the bidder relinquishes control of the bid. Chestnut Hill Constr., Inc., B-216891, Apr. 18, 1985, 85-1 CPD ¶ 443. Thus, the critical determination is when Barron relinquished control of its bid documents in relation to the bid opening officer's declaration that the time for receipt of bids had passed. In this regard, while the solicitation concerning the time for receipt of bids contained both the phrases "prior to the time" and "after the time set for receipt," these phrases must be read consistently with the Federal Acquisition Regulation, which states that a bid is late if received "after" the time set for opening. We have uniformly interpreted this and similar regulatory language as meaning that bids could be submitted up to the time the contracting or bid opening officer announces that the time set for bid opening has arrived. Amfel Constr., Inc., B-233493.2, May 18, 1989, 89-1 CPD ¶ 477.

Here, the evidence clearly shows that the Barron representative relinquished control of its bid (including all bid documents) simultaneously with the contract specialist's declaration that the time for receipt of bids had passed. Accordingly, we find that Barron's bid was not submitted late.

The protest is denied.

  
James F. Hinchman  
General Counsel