



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: John J. Kirlin, Inc.

File: B-250244

Date: December 15, 1992

Caryl Sandler Shuman, Esq., for the protester.
Terrence J. Tychan, Department of Health & Human Services,
for the agency.

S. Leslie Adkins, Robert C. Arsenoff, Esq., and
John Brosnan, Esq., Office of General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest against agency's consideration of a late bid is denied where government's actions were the paramount cause of the bid's late arrival and the integrity of the procurement system would not be compromised by consideration of the bid.

DECISION

John J. Kirlin, Inc., protests the award of a contract to Bell-BCI Company, under invitation for bids (IFB) No. 263-92-B(CP)-0460, issued by the National Institutes of Health (NIH), Department of Health and Human Services, for the expansion of chilled water service to Building 5 at the NIH campus in Bethesda, Maryland. Kirlin argues that Bell's bid should not have been considered for award because it was not received in the proper room until after the time scheduled for bid opening.

We deny the protest.

The IFB was issued on August 4, 1992, stating that bids were due by 2 p.m. on September 3, in Room G800 of NIH's Building 13. Kirlin was present at the appointed time and place for the opening and submitted the apparent low bid.

Shortly after the opening, Bell's representative arrived in Room G800 and explained that he had hand-carried his bid on the chilled water expansion project to a different room in the same building where, at the same time, a bid opening for a different solicitation was being conducted. The representative had relied upon a sign on the door through which he entered the building in concluding that the bid opening room for the subject IFB had been changed. That

sign referred to a different solicitation number with the title "Compilation of 13 Construction Jobs" and listed Room 2E64. There was no sign for the chilled water expansion project bid opening at this entrance. Bell's representative interpreted the sign to mean that the solicitation for the chilled water expansion (also a construction project) had been combined with other solicitations and that the room had been changed to Room 2E64--the usual room for receipt of bids at NIH.

The bid opening officer for the combined construction jobs project accepted Bell's bid and clocked it in at 1:46 p.m., without noticing that Bell's bid envelope listed a different solicitation number and stated that it was for "Chilled Water Exp." The same official escorted Bell's representative and the representatives of other bidders to another room for the 2 p.m. bid opening. After the bid opening for that solicitation began, Bell inquired about the chilled water expansion project and the error was discovered. The contract specialist retained possession of Bell's unopened bid until after the opening for the combined construction jobs project was concluded; the bid was then delivered to the contracting officer for the chilled water expansion project by the same agency official.

Upon concluding that government mishandling was a factor in the late delivery of Bell's bid, the contracting officer for the chilled water solicitation opened it. Since Bell's bid was low, the agency decided to make award to the firm. This protest followed.

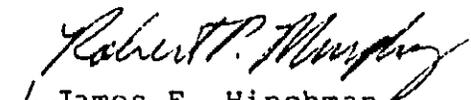
As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time; however, a late hand-carried bid can be considered for award if government mishandling after timely receipt at the agency was the paramount cause for its late receipt in the bid opening room and consideration of the late bid would not compromise the integrity of the procurement process. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. In determining relative responsibility for the 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 unreasonably. See Dale Woods, B-209459, Apr. 13, 1983, 83-1 CPD ¶ 396.

We agree with the agency's conclusion that it contributed significantly to the bid's late receipt. Here, Bell's representative entered the appointed building and saw only one sign at the entrance he used--a sign for the bid opening of 13 combined construction jobs in a room normally used for NIH bid openings. Although there were signs for the chilled water expansion project bid opening posted at other entrances, in the absence of such a sign at the entrance

used by Bell's representative, and given the context of a combined construction project on the sign he saw, we cannot conclude that he acted unreasonably in believing that the bid opening room for the subject IFB had been changed. While this belief turned out to be in error, the error was significantly compounded by an agency official--a contract specialist familiar with both projects--who failed to read Bell's bid envelope which clearly stated the solicitation to which it applied and who effectively precluded Bell from delivering the bid to the proper room in the same building by keeping it in her sole custody from 1:46 p.m. until after the 2 p.m. time scheduled for bid opening. Under these circumstances, we find that Bell's reliance on the contracting specialist acceptance of its bid was reasonable. See Dale Woods, supra.

Moreover, consideration of Bell's bid would not introduce any unfair advantage into the competitive process and thereby compromise its integrity since the bid was in the sole custody of the agency at the time of bid opening and could not be changed by Bell. Watson Agency, supra. We, therefore, believe that the agency's decision to consider Bell'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 James F. Hinchman
General Counsel