



Comptroller General  
of the United States

1213271

Washington, D.C. 20546

# Decision

**Matter of:** GS Edwards  
**File:** B-255202  
**Date:** January 31, 1994

Michael Smith for the protester.  
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.  
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest of agency rejection of late bid is denied where bid was delivered after the bid opening and bid could not be considered for award under the late bid rules.

## DECISION

GS Edwards protests the rejection of its bid as late under invitation for bids (IFB) No. 69D(CSC)-19-94, issued by the Department of Veterans Affairs (VA) for maintenance, inspection and repair of the fire alarm system at the Veterans Affairs Medical Center (VAMC) in North Chicago, Illinois. Edwards contends that its bid should have been considered for award because, in spite of its late delivery, agency representatives agreed to accept the bid.

We deny the protest.

Bids under the IFB were due by 11 a.m. on September 20, 1993. The IFB was amended on September 2 to correct a typographical error in the address of the bid depository. The amendment changed the address for receipt of bids from "500 West National Avenue, Building 5" to "5000 West National Ave. - Bldg. 5." A certified return receipt indicates that Edwards received the amendment on September 7.

The following chronology is based on statements prepared by agency representatives and is not disputed by Edwards. At 11 a.m. on September 20 in a conference room in building 5, the contracting officer, with another contracting officer and a procurement clerk in attendance, announced the bid opening. After stating that any bids received after that

time would be handled under the late bid procedures, the contracting officer opened the single bid that had been received from Simplex Time Recorder Company and read the company's name, its line item prices and its total bid. The contracting officer then announced that the bid opening was concluded.

At 11:03 a.m., a representative of Edwards entered the bid room. The representative admitted that he was 3 minutes late, stating that he originally had tried to deliver the bid to the incorrect address listed in the IFB. The contracting officer informed the Edwards representative that bid opening was concluded and that any bids received after 11 a.m. were late and would be handled in accordance with the late bid procedures. She also stated that an amendment had been issued to correct the bid depository address.

The Edwards representative stated that his firm had not received the amendment and insisted on speaking with the contracting officer's supervisor. When the supervisor arrived, the Edwards representative continued to argue that the agency should accept the firm's bid. The contracting officer showed the Edwards representative the receipt indicating that Edwards received the amendment on September 7. The Edwards representative acknowledged that his firm must have received the amendment but continued to insist that the firm's bid should be considered even though it was late. The contracting officer and her supervisor agreed to review the circumstances of receipt with agency attorneys.

The Edwards representative then wrote a memorandum describing the circumstances of his bid delivery. The memorandum states that he discovered that bids were to be delivered to 5000 West National Avenue when he attempted to deliver the bid to the incorrect address. The memorandum states that the Edwards representative arrived at the correct address at 11:03 a.m. and he was "told that (the) bid would be considered for late bid." The Edwards representative, the contracting officer and the supervisor signed the memorandum.

Upon review, the agency found that Edwards' bid was late and would not be considered. Award was made to Simplex.

Edwards argues that its representative "was told that the bid would be considered for late bid" and apparently believes that when an agency agrees to consider a bid as a late bid, it means the bid will be accepted and considered for award in spite of its late receipt. Edwards misunderstands the rules concerning late bids.

As a general rule, to be considered for award, a bid must be received in the office designated in the IFB not later than the exact time set for bid opening. Federal Acquisition Regulations § 14.302(a). However, under some circumstances, a late bid can be considered for award. For instance, a hand-carried bid that arrives late at the bid opening room can be considered if government mishandling after timely receipt at the agency was the paramount cause for its late receipt and if consideration of the bid would not compromise the integrity of the procurement process. John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419 (consideration of bid that was delivered late due to government mishandling after timely receipt by agency did not introduce an unfair advantage into the procurement process because the bid was in the sole custody of the government and therefore unalterable by the bidder from its receipt at the installation until its actual opening).

Here, there is no argument among the parties that the Edwards representative arrived at the bid opening room at 11:03 a.m. and that he relinquished control of the bid at that time.<sup>1</sup> Indeed, the Edwards representative submitted a signed memorandum specifically stating that he arrived at the bid depository at 11:03 a.m. Therefore, there is no question that Edwards delivered the bid late and, because the bid was already late when it came into the possession of the agency at 11:03 a.m., its lateness was not a result of any subsequent failure on the part of the agency to deliver the bid in a timely fashion to the place designated for bid opening.

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<sup>1</sup>In its protest, Edwards complained that the contracting officer originally wrote on the bid envelope that receipt was at 11 a.m. and "then someone wrote over the time as 11:03 a.m. . . . causing the bid to be considered late." Edwards argued that "only the original time can be considered" and therefore, its bid was delivered on time. In its report, the agency explains that originally, the contracting officer wrote on the bid envelope that the bid was received at 11 a.m. but that she "immediately recognized [her] error and wrote over it 11:03 a.m. as requested by [the Edwards representative]." The contracting officer also wrote the words "eleven-0-three" on the envelope to clarify the exact time of receipt. Since the protester did not respond to the agency's rebuttal, we deem the issue abandoned. Inner Harbor West Joint Venture, B-249945.3, Mar. 11, 1993, 93-1 CPD ¶ 232. In any event, in view of the admission of Edwards' representative that he delivered the bid at 11:03 a.m., there is no reason to believe that the bid was delivered on time.

Moreover, the agency did not contribute to the bid's late delivery since the record shows that, prior to bid opening, the VA notified bidders of the correct bid depository address and this notification was received by the protester. Additionally, consideration of Edwards' bid would introduce an unfair advantage into the competitive process and thereby compromise its integrity since the bid was not in the sole custody of the agency at the time of bid opening.

The protest is denied.

*Robert P. Murphy*  
for Robert P. Murphy  
Acting General Counsel