



Comptroller General
of the United States

105838

Washington, D.C. 20548

Decision

Matter of: Pershield, Inc.

File: B-256827

Date: July 27, 1994

Ronald A. Schechter, Esq., Drew A. Harker, Esq., and Michael E. Lackey, Jr., Esq., Arnold & Porter, for the protester.

Jeffrey I. Kessler, Esq., and Capt. David B. Freeman, JAG., Department of the Army, for the agency.

Christine F. Davis, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A procuring agency properly considered a misplaced bid modification that resulted in the low bid, where the record establishes that the modification arrived at the proper office of the procuring agency 2 days before bid opening and remained in the agency's possession until it was discovered before award.

DECISION

Pershield, Inc. protests the proposed award of a contract to Eastern Canvas Products, Inc., under invitation for bids (IFB) No. DAAA09-93-B-0499, issued by the Department of the Army, for the procurement of 256,400 chemical and biological hoods. Pershield objects to the Army's acceptance of Eastern's allegedly late bid modification, which made Eastern's bid lower than Pershield's.

We deny the protest.

The IFB was issued on September 10, 1993, with an October 26 bid opening date. The IFB advised bidders to submit their bids to a specific location, depending upon the delivery method selected. Bidders using an express mail delivery service were to send their bids to the following address at the headquarters of the issuing activity:

HQ AMCCOM, Procurement Directorate, Mailroom
Attention: ANSMC-PAM-AS
Building 350, 4th Floor NE Bay
Rock Island, IL 61299-6000

The IFB also directed all bidders to affix to their outer bid envelopes an enclosed red label identifying their bid. Specifically, bidders were directed to enter on the label a description of the supplies for which the bid was submitted, the solicitation number, and the time and date of bid opening.

The agency subsequently issued five amendments to the IFB, the first of which extended the bid opening date indefinitely. On February 17, 1994, the Army issued amendment No. 0004, which set bid opening at 2 p.m. on March 10. On March 9, the day before bids were due, the Army issued amendment No. 0005, which extended bid opening to 2 p.m. on March 17.

Seven bidders, including Eastern and Pershield, submitted bids by the 2 p.m., March 17 bid opening. The contract specialist reviewed the bid packages and recited the prices to the recorder. As recited, Pershield submitted the apparent low bid at \$11.84 per unit, and Eastern submitted the apparent next low bid at \$12.90 per unit.

In an affidavit submitted to our Office, the contract specialist explained that, shortly after bid opening, he received a telephone call from an Eastern representative asking for the bid results. When the contract specialist advised that Pershield submitted the low bid at \$11.84 per unit, the Eastern representative responded that he had sent a bid modification on March 14 via U.S. Postal Service Express Mail, lowering Eastern's bid price to \$11.33 per unit. The contract specialist states that he then reexamined the Eastern bid documents present at bid opening, and that these documents included a letter from Eastern, dated March 14, which acknowledged receipt of amendment No. 0005 and also reduced Eastern's bid to \$11.33 per unit. The contract specialist states that he glanced at this letter at bid opening, but mistook it for a cover letter acknowledging amendment No. 0005 and did not realize that it contained modified pricing. The agency wishes to make

¹More accurately, Pershield bid \$11.84 per unit, including the costs of first article testing, and \$11.83 per unit, assuming it qualified for a waiver of the first article testing requirement under the IFB. Eastern did not differentiate its price to account for first article testing costs.

²The contract specialist's account is corroborated by an affidavit submitted by a student aid present at bid opening, who states that she saw the letter, and the modified pricing, but did not alert the contract specialist to his

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award to Eastern based upon this bid modification, arguing that there was no late receipt, only late discovery, of the bid document.

A misplaced bid may be considered for award where (1) the bid was received at the installation prior to bid opening, (2) it remained under the agency's control until discovered, and (3) it was discovered prior to award. Kuhnel Co., Inc., 70 Comp. Gen. 131 (1990), 90-2 CPD ¶ 455. In determining whether such a bid may be considered, the time of receipt at the installation must be established. Id.; Iconetrics, Inc., 71 Comp. Gen. 88 (1991), 91-2 CPD ¶ 477. Federal Acquisition Regulation § 14.304-1 provides that the only acceptable evidence to establish the time of receipt is the time/date stamp of the installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

The Army has produced the two express mail envelopes used by Eastern to transmit the Eastern bid documents. Eastern addressed both envelopes to the proper address at the issuing activity and affixed completed red labels to both envelopes identifying its bid, the solicitation, and the bid opening date. The first envelope, which was submitted in response to the March 10 bid opening, bears a U.S. postage label dated March 7, and two stamps showing receipt of the document on March 8. In his affidavit, the contract specialist states that this envelope contained Eastern's bid of \$12.90 and all amendments issued to date. The second envelope, which was submitted in response to the amended March 17 bid opening, bears a U.S. postage label dated March 14, and two stamps showing receipt of the document on March 15. The agency states that one of the March 15 "received" stamps, which notes a time of 7:30 a.m., is that of the agency mailroom; the other "received" stamp, which notes a time of 12:30 p.m., is that of the Bid Opening Section of the agency's Procurement Directorate. The contract specialist states that this envelope contained the Eastern bid modification.

We find that the Army properly considered Eastern's bid modification. The time/date stamps on the envelope of Eastern's bid submission for the March 17 bid opening establish that the bid modification was received in the Bid Opening Section of the Procurement Directorate by 12:30 p.m. on March 15, 2 days before bid opening. Thus, the record establishes that the bid modification arrived at the proper

² (...continued)

oversight when he recited Eastern's bid price as \$12.90 in deference to his experience.

office prior to bid opening and remained within the agency's control until its discovery prior to award. See Kuhnel Co., Inc., supra.

Pershield argues that, even if the bid was timely, "the integrity of the sealed bidding system requires that a bid that is not read at bid opening must be treated as presumptively late." We fail to see how the competitive system would be compromised by acceptance of a bid which was present at bid opening, but mistakenly overlooked. See Leland and Melvin Hopp, Partners, B-211128, Feb. 15, 1984, 84-1 CPD ¶ 204. Finally, while Pershield suggests that the bid envelope might not have contained Eastern's bid modification, the envelope was labeled as containing a bid in response to the March 17 bid opening, and there is no evidence to suggest that it contained other than the modified Eastern bid documents.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel