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DECISION



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

*J. P. ...
Proc. I*

FILE: B-196941

DATE: March 4, 1977

MATTER OF: H. A. Kaufman Co.

DIGEST:

Hand-delivered bid initially rejected at bid opening as late was properly accepted for award notwithstanding fact that bid was opened and retained by bidder, since integrity of the competitive bidding system is maintained where record showed lateness was due to improper Government action and corroborating evidence established that amount of bid as submitted and exposed at time of bid opening had not been altered.

H. A. Kaufman Co. (Kaufman) protests the June 30, 1976, award of a construction contract to Hydro-Mechanical Co. (Hydro) under invitation for bids (IFB) 665-023, issued by the Veterans Administration (VA) Hospital, Sepulveda, California. The basis for the protest is the allegation that VA improperly accepted Hydro's late bid which was lower than the low bid (submitted by Kaufman) that was received and publicly announced at the time and place specified by the IFB for bid opening.

Bidders were advised on page 2 of the bid form in the space designated "Directions for Submitting Bids" that bids must be addressed as follows:

Proposal for Patient Support System
Veterans Administration Hospital
Sepulveda, California, to be opened
June 3, 1976, 1:30 P.M., local time
at place of bid opening, Station
Theater, Building No. 21

Construction Contracting Officer
c/o Chief, Supply Service
Room No. 107, Building No. 1
Veterans Administration Hospital
16711 Plummer Street
Sepulveda, California 91343

Amendment No. 3 to the IFB extended the bid opening date to June 10, 1976.

On the June 10, 1976, bid opening date, Building No. 1 designated in the address was not occupied. There were signs on the building directing bidders to proceed to Building No. 99 where the Office of the Chief of the Supply Service was then located. The Hydro representative who was delivering the bid arrived at the complex and went

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directly to Building No. 1. Seeing it unoccupied, he followed the directions on the signs to Building No. 99 where a purchasing agent acknowledged receipt of the bid envelope and advised the representative that bid opening would take place at the Station Theater Building. The envelope shows the purchasing agent's handwritten receipt at 1:29 p.m., June 10, 1976. Hydro's representative retained the sealed bid envelope and proceeded to the Theater Building which was a little less than a 1/2 mile from Building No. 99. Bids were still being opened when Hydro's representative arrived 15 minutes later. After being informed that a late bid could not be accepted, Hydro's representative opened the bid envelope and showed the bid to the Chief of the Supply Service who noted that it was in the amount of \$407,000. Hydro mailed the bid and bid envelope to the Chief, Construction Contract Administration Division in the Office of Construction, Washington, D.C., and appealed the rejection.

VA found that Hydro's bid should have been accepted. It determined that the delay in Hydro's bid was caused primarily by the conflicting designations on the bid form indicating where the bids were to be received. In this regard, VA noted that the IFB should have been amended to advise all bidders of the new location for receipt of bids since the Government was aware that Building No. 1 was unoccupied and that the Supply Service had moved to Building No. 99. Therefore, VA concluded that Hydro's bid was eligible for award notwithstanding the fact that it had been opened and retained by Hydro's representative. Since the amount of the bid at bid opening had been verified by a VA official, and no opportunity existed for Hydro to change its price or obtain an unfair advantage, VA determined that the integrity of the competitive system would not be compromised by acceptance of Hydro's low bid.

Protests regarding the effect of a bidder's failure to deliver a bid to the place specified by an IFB have been the subject of several decisions of this Office. In Hyster Company, 55 Comp. Gen. 267, 274-275 (1975), 75-2 CPD 176, we stated:


"The general rule followed by this Office is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. However, a hand-carried bid which is received late may be accepted where bid lateness was due to improper Government action and consideration of the late bid would not compromise the integrity of the competitive bid system. See Chase Construction Corporation, 3-183609, July 1, 1975; 51 Comp. Gen. 69 (1971); and 34 id. 150 (1954). We recognize that where there is a delay between the initial tender of a bid and subsequent Government possession of the bid after bid opening,

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and when there is a genuine question whether the bid is exactly the same as when originally tendered, rejection of the bid is necessary in order to safeguard the competitive bid system against the possibility of acceptance after bid opening of a subsequently altered or otherwise modified bid. See, e.g., B-143288, June 30, 1960. However, this Office has sustained the acceptance of a bid coming into the Government's possession after bids were opened where it could be shown by corroborating evidence that the bid as tendered was not altered. 41 Comp. Gen. 807 (1962)."

We note that in this case, Hydro's low bid was received at Building No. 99 before the bid opening time and would have been received on time at the place of bid opening but for the bid form's misleading information regarding the proper place for delivery of bids. As indicated above the Hydro bid was receipted at 1:29 p.m. at Building No. 99. That was after about a 15-minute walk from Building No. 1 based on the time it took the Hydro representative to walk back from Building No. 99 to the Station Theater which according to Kaufman was across from Building No. 1. Deducting the 15 minutes from the receipted time and adding the 2 minutes Kaufman says it ordinarily takes to walk from Building No. 1 to the Station Theater would have constructively placed the bid at Building No. 1 at 1:14 p.m. and at the Station Theater at 1:16 p.m., which would have been well in advance of the bid opening. Further, since the record clearly establishes that Hydro's bid as submitted and opened had not been altered, we believe that the integrity of the competitive bidding system was maintained by VA's subsequent acceptance of Hydro's bid. However, whenever a late bid is received in the future, it should be held until after award as provided in Federal Procurement Regulations § 1-2.303-7 (1964 ed. amend. 118).

Accordingly, the protest is denied.


Acting Comptroller General
of the United States