

DECISION

27201

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

FILE: B-209271**DATE:** February 8, 1983**MATTER OF:** Veterans Administration--Request for Advance
Decision**DIGEST:**

1. Bid that was timely submitted at the place designated for receipt of bids, but was improperly returned to the bidder's possession where it remained until several minutes after the time set for opening of bids, may be considered for award where the bid was in a sealed envelope, the bidder possessed the bid for only 10 minutes, there was no suggestion that the bid was altered, and the bid was returned to the Government's possession prior to the opening of any bid, consideration of the bid would not compromise the integrity of the competitive bidding system.
2. The contracting officer reasonably interpreted a clause, which provided that bids offering less than 75 percent of the estimated requirements would not be considered, as referring to the estimated number of hours listed for each item and not to the number of items listed on the IFB.

The Center Director of the Veterans Administration Medical Center, Northport, New York requests an advance decision on a protest filed with the Center by Alert Coach Lines, Inc. regarding a bid submitted by Bimco Industries, Inc. in response to invitation for bids (IFB) No. 632-45-82. Alert contends that Bimco's bid should not be considered for award because it was submitted late. In its comments to this Office, Alert contends also that Bimco's bid was nonresponsive. We believe that the bid was not late and that the contracting officer reasonably determined that the bid was responsive. Accordingly, Bimco's bid may be considered for award.

024-593

The IFB was issued to obtain charter bus service for the Medical Center. The solicitation stated that hand-carried bids must be received in the depository located in Supply Service Building No. 10, room 201, by 2:00 p.m. on August 27, 1982. We are informed that the normal procedure at the Medical Center regarding a hand-carried bid is that a bidder who comes to room 201, the Purchase and Contracts Office, is instructed to take his bid to room 218, two doors down the hall. There, a secretary receives and time-stamps the bid. The bid is then taken by the secretary into the Chief of the Purchase and Contracts Section's office where the Chief or his Assistant deposits it in the safe, where it remains until the time set for bid opening. A bidder who wishes to attend the bid opening is informed where the bid opening will occur and requested to wait down in the lobby where the conference rooms are located.

Normal procedures were not followed in this case. The person who received and stamped both of the bids submitted in response to the IFB was a clerk-typist who had been temporarily assigned to act as secretary for the Chief of Supply; she had not been advised of the normal procedures for handling bids. Sometime prior to 2:00 p.m. on August 27, a representative of Alert submitted a hand-carried bid to the secretary in room 218. After time-stamping the bid, the secretary handed it back to Alert's representative and instructed him to go downstairs to room 114 to await the opening of bids. As the representative was leaving room 218, the bid opening officer walked past. Alert's representative, who had submitted bids on previous solicitations at the Medical Center, and who was familiar both with normal procedures and with the bid opening officer, handed the bid to her. She deposited it in the safe.

At approximately 1:52 p.m., a representative of Bimco submitted a bid to the secretary in room 218. The bid envelope was time-stamped and handed back to the representative who was told to go downstairs to room 114 to await bid opening. The Bimco representative was reportedly unaware of the normal procedure for handling bids, having submitted no other bids at the Medical Center in recent years.

At 2:00 p.m., the bid opening officer left her office with the bid submitted by Alert. As she entered room 114, accompanied by the recorder of bids, she noticed

that there were two men present. Knowing that she had but one bid envelope in her possession, the bid opening officer asked if the two men were together. She was advised that they were not. She asked the man who she did not know if he had tendered a bid. He replied, "Yes, to the girl upstairs." The bid opening officer immediately turned and left the room. She ran upstairs and asked the secretary whether she had received another bid. She was told that another bid had been received, time-stamped and returned to the bidder, who was told to wait downstairs. The bid opening officer then ran back downstairs and asked the representative from Bimco if he had his bid. He said that he did, and handed the sealed bid envelope to the bid opening officer. By this time it was several minutes after 2:00 p.m. The bid opening officer looked at the bid envelope and noted that it was time-stamped 1:52 p.m. Both bids were opened and the results announced. The recorder of bids, who had remained in room 114, reports that the bid opening officer was gone for approximately 1 to 3 minutes. During this time, there was no conversation and no one left the room.

The regulations provide that bids received at the office designated in the invitation for bids after the exact time set for the opening of bids are late bids. Federal Procurement Regulations (FPR) § 1-2.303-1, and that a late hand-carried bid may not be considered for award. FPR § 1-2.303-5. In this case, it is clear that Bimco's bid was received at the designated office prior to the exact time set for the opening of bids. The Bimco bid does not, therefore, come within the regulatory definition of a late bid. In this instance, however, the bid was returned to the bidder and remained in the bidder's possession until shortly after the time set for bid opening.

We are aware of no case that has considered the exact factual situation presented here. A number of our prior decisions, however, address the question of whether a bid that was timely submitted, but improperly returned to the bidder by the Government, may be considered for award when it has been resubmitted after bid opening time. See, e.g., 50 Comp. Gen. 325 (1970); Delbert Bullock, B-208496, September 7, 1982, 82-2 CPD 201. In

these cases, our primary concern always has been with preserving the integrity of the competitive bidding system. Although generally a bid that has been returned to the bidder after the opening of bids may not be considered for award, Dima Contracting Corp., B-186487, August 31, 1976, 76-2 CPD 208, there have been instances where we have held that a bid resubmitted after bid opening may be considered for award where it is clear that the integrity of the competitive bidding system would not be compromised. E.g., 50 Comp. Gen. 325, supra; 41 Comp. Gen. 807 (1962).

In this case, Bimco's bid was timely submitted, as evidenced by the time-stamp on the bid envelope. The sealed bid envelope was then returned to Bimco's representative by the Government official authorized to receive bids with instructions to go downstairs to await the bid opening. There is no evidence that the Bimco representative was aware that this was not normal Medical Center procedure. The time that elapsed from when the bid was time-stamped to when the bid was finally surrendered to the bid opening officer was just over 10 minutes. During most of this time, Bimco's representative was in the company of the recorder of bids, the bid opening officer, or the representative from Alert. At no time during this period was the Bimco representative aware of the contents of Alert's bid. There is not the slightest suggestion by any one that Bimco's bid was altered in any way. Also, there is no indication that the Bimco representative intentionally delayed surrendering the bid to the bid opening officer. By her own admission, the bid opening officer left room 114 so quickly after discovering that a second bid had been tendered that the Bimco representative had little opportunity to disclose the whereabouts of his bid.

Given the totality of the rather unique circumstances presented by this case, we believe that the integrity of the competitive bidding system would not be compromised were the Bimco bid considered for award. Failure to consider Bimco's bid would penalize it unfairly for a situation that was created almost exclusively by Government personnel. See 41 Comp. Gen. 807, supra.

The second issue raised by Alert involves the responsiveness of Bimco's bid. The IFB consists of seven items, each requiring a different type of charter bus service and each listing the estimated number of hours of that type of service that will be required. Paragraph 8 of the Special Conditions included in the IFB, entitled "Estimated Quantities," advises bidders that while it is impossible to determine the exact quantities that will be required during the contract term, each successful bidder will be required to provide all of the services that may be ordered during the contract term, except as otherwise limited in its bid. Bidders are further advised that bids stating that the total quantities delivered shall not exceed a certain specified quantity will be considered, but that bids offering less than 75 percent of the estimated requirements will not. Alert contends that because Bimco bid on only three of the seven items of the IFB, its bid fails to comply with the 75 percent requirement and should therefore be considered nonresponsive. Alert apparently interprets the "Estimated Quantities" provision as requiring each bidder to bid on at least 75 percent of the total number of items listed in the IFB.

The contracting officer determined that Bimco submitted a responsive bid. The contracting officer reports that the 75 percent figure used in the "Estimated Quantities" clause refers only to the estimated number of hours listed for each item and not to the total number of items listed on the IFB. Since there is no indication on the Bimco bid that it is limiting its bid to a number of hours less than 75 percent of the estimated requirements bid on, the contracting officer determined that the bid complies with the solicitation.

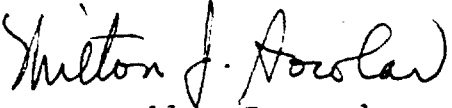
We believe the contracting officer's interpretation of Special Condition 8 to be reasonable. The solicitation schedule is set up substantially as follows:

B-209271

Item	Supplies	Services	Quantity	Unit	Amount
	BUS SERVICE CHARTER:		ESTIMATED		
	MEDICAL ADMINISTRATION				
	SCHOOL BUS: NOT LESS THAN 40 PASSENGER. TWO (2) EACH DAY, MONDAY THRU FRIDAY, EXCEPT SATURDAY, & HOLIDAYS, AS FOLLOWS:				
	1. ONE: 5.26 Hrs., per schedule Pages 6 & 7			1323	HR
	2. ONE: 6.5 Hrs., per schedule Pages 8 & 9			1638	HR

It is difficult to read the "Estimated Quantities" clause as referring to anything other than the number of hours listed in the IFB in the column labeled "Quantity" and followed by the typed word "Estimated." The protester fails to suggest a single reason why or how this clause could be read otherwise. Consequently, there is no basis for us to question the contracting officer's determination that the Bimco bid was responsive.

Since paragraph 10(c) of Standard Form 33, incorporated by reference into the IFB, provides for multiple awards, and nothing in the IFB indicates that award is to be made in the aggregate, an award, if otherwise proper, may be made to Bimco for those items on which it bid.

for 
Comptroller General
of the United States