

DECISION

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

FILE: B-185032

DATE: August 3, 1976

MATTER OF: Robert McMullan & Son, Inc.

6/26/76

98758

DIGEST:

Procuring activity has not designated its Base Communications Center as place for receipt of written notice of bid mistakes merely because all its telegraphic messages are routed through Center. Prior decision denying upward adjustment in contract price on basis that notice of bid mistake was not received by Government until after award was made is sustained.

Robert McMullan & Son, Inc., has requested reconsideration of our decision, B-185032, March 18, 1976, 76-1 CPD 185 denying its claim for an upward price adjustment in its contract with the Department of the Navy, Naval Facilities Engineering Command (Engineering Command) No. N62467-73-C-0073.

The Navy issued a solicitation for the construction of barracks and the modernization and additions to mess facilities at the Charleston Naval Station and McMullan was the low bidder. Between bid opening date, June 5, 1975, and award date, June 30, 1975, McMullan discovered that it had mistakenly concluded that a supplier's quote included both labor and materials, when, in fact, the quote covered only labor costs. McMullan attempted to inform the contracting officer of its mistake on June 30, 1975 by dispatching a TWX message addressed to the Engineering Command, the place designated in the solicitation for receipt of pre-bid opening withdrawals. The TWX arrived at a nearby Navy Communications Center on June 30, 1975, but was not delivered to the Engineering Command until the following day, after the award was made. This Office found that McMullan's notice of mistake was not received by the Engineering Command until July 1, 1975, and that notice of award to McMullan was mailed on June 30, 1975. We held that since the notice of mistake and withdrawal was not received by the Engineering Command until after award had been made, the contracting officer did not have notice of mistake and consequently a valid and binding contract exists at the award price.

McMullan now contends that our decision does not follow from the facts presented; that the Navy's credibility is suspect because of misstatements in its report to this Office that McMullan's TWX message was timely delivered to the Charleston Naval Base Communications Center on June 30, 1975, and that, even if receipt at the

Communications Center does not constitute timely notice to the Command, the Command received or should have received the notice on June 30, 1975.

As to McMullan's first contention, the Navy has always contended that the notice of award was mailed on June 30, 1975. The Navy, when reminded that McMullan's TWX was recorded by base communications center personnel at 4:25 p.m. on June 30, initially took the position that the notice of award must have been mailed by 3:30 p.m. on June 30, 1975. When McMullan showed that the TWX arrived at the communications center at 2:08 p.m., the Navy then took the position that the award notice must have been mailed by 12:30 p.m. While the Navy was unable to establish the exact time when the notice of award was mailed to McMullan, the record indicates that the only remaining tasks to be completed with reference to the award notice on June 30, 1975 were its typing, signing and mailing. Since this "year end" award had to be made by June 30, the Navy believes that the award notice and award documents were mailed to McMullan on June 30, 1975. In the absence of evidence to the contrary, we concluded that McMullan "has provided no basis for questioning the Navy's representation that the award document was mailed prior to receipt by the Engineering Command of McMullan's alleged mistake and withdrawal." McMullan has not presented any evidence at this time to show that the award was mailed after June 30, 1975. Therefore, we see no reason to change our conclusion in this regard.

McMullan also contends that in any event its TWX message was timely received by the Navy on June 30, because the message was "deposited in the exact place authorized by the [the Command] for such communications," and therefore, is within the ambit of the rule enunciated in the Restatement of Contract, Section 69. That section states in pertinent part that:

"A written revocation * * * is received when the writing * * * is deposited in some place which [the person addressed] * * * has authorized as the place for this or similar communications to be deposited for him."

McMullan contends that, because the Western Union has been directed by the Command to send all telegraphic messages addressed to the Command to the Base Communications Center over direct teleprinter, the Command has designated the Base Communications Center as the place for receipt of written notice of mistakes in bid.

It seems to us, however, that no such designation has been made. We note, for example, that in accordance with the standard bidding instructions, messages to the Command containing bid modifications were required to be received by bid opening at the

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office designated in the solicitation in order to be considered timely. Furthermore, while late bid modifications could be considered under certain circumstances, they could only be considered if received prior to award at the designated office. See ASPR 7-2002.2(a) (1975 ed.). In both cases receipt of the message at the Base Communications Center did not suffice. The Navy's arrangements with Western Union are internal management matters and in our opinion, were not intended to substitute for a bidder's duty to notify the Command of matters relating to bids. Although the Command did not specify where post bid opening allegations of bid mistake were to be received, we believe that such an allegation had to be received by the Command before it could be considered to have been received by the Government.

Finally, McMullan contends that the Navy did receive or should have received the notice of mistake message on June 30. As stated in our prior decision, the record showed that McMullan's message was first received at a nearby Navy Communications Center on June 30, at 2:08 p.m., and was not received by the Engineering Command until 8:08 a.m. the following day. While McMullan insists that the Command should have received the message sooner than that, the record indicates that, in accordance with the usual processing time, several hours elapsed between receipt of the message on the teleprinter machine and its removal by communications station personnel. Navy reported that McMullan's message was not processed until 4:25 p.m. on June 30, and was picked up at 7:45 a.m. the next day for delivery to the Command at 8:08 a.m. We find no reason to dispute the Navy's account; nor do we question the adequacy of its message communication system.

For the above reasons the decision in B-185032, March 18, 1976 is affirmed.

Deputy


Comptroller General
of the United States