

**DECISION**

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

FILE: B-186450

DATE: July, 26, 1976

MATTER OF: Tower Performance, Inc.

## DIGEST:

IFB permitted consideration of late bids only when late receipt was due solely to delay in mails for which bidder was not responsible. Bid sent by certified mail 28 hours before bid opening that arrived late may not be considered for award notwithstanding bidder's offer (prior to opening) to send telegram confirming its contents since telegraphic bids were not authorized by IFB and record shows that lateness was not due to delay in mails but to bidder's failure to allow sufficient time prior to bid opening for mailing and delivery of bid in accordance with normal delivery time.

Tower Performance, Inc. (Tower), protests the rejection of its bid and the award of a contract to any other bidder under invitation for bids (IFB) 1-73-6018 issued by the National Aeronautics and Space Administration (NASA), Langley Research Center (LRC), Hampton, Virginia.

The invitation issued to 17 bidders on March 16, 1976, solicited bids for services and materials necessary for cooling tower repairs. Subsequent IFB amendments extended the bid opening date from April 6 to April 20, 1976, and also changed the time for the site visit from March 30 to April 13, 1976. Three bids were received at the 3:00 p.m. bid opening on April 20, 1976. Tower alleges that its unopened bid of \$16,777 was \$963 less than the lowest bid received. However, Tower's bid did not arrive at the LRC mailroom until April 21, 1976 (one day after bid opening). By letter dated April 21, 1976, Tower was advised that the bid had been received late and was not for consideration.

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Tower states that its engineer attended the site visit which was held by NASA on April 13, 1976. After returning to the Office on April 14, 1976, he completed his calculations and secured a bid bond by telephone. The record indicates the bid bond which had been mailed on April 15, 1976, was not received by Tower until April 19, 1976. Tower indicates that religious holidays (presumably Passover, April 15, and Easter, April 18) were responsible for the delay in receipt of the bid bond. Nevertheless, upon receipt of the bond, Tower states that its bid was mailed to NASA before noon on Monday, April 19, 1976.

The argument is made by Tower that its bid should be considered for award because it was sent by certified mail 28 hours before bid opening. This mailing was considered to be timely because normal mail distribution allegedly assures 1-day delivery time from the point of mailing (Caldwell, New Jersey) to the bid opening location (Hampton, Virginia). Furthermore, on the morning of April 20, 1976, when it learned that the mailed bid had not been received, Tower offered to send a telegraphic bid confirming the contents of the written bid. This request was refused because the IFB did not authorize the submission of telegraphic bids. Tower argues that a telegram would not have been contrary to the IFB's provisions since the purpose of the message was merely to confirm the written bid that had been previously submitted as required by the solicitation. Therefore, Tower contends that the late arrival of its bid should be waived as a minor informality.

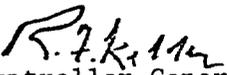
Paragraph 7 of the IFB's instructions to bidders dealing with late bids states, in pertinent part, that:

"(a) Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless:  
(1) They are received before award is made; and  
either (2) they are sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the Government that the late receipt was due solely to delay in the mails for which the bidder was not responsible; \* \* \*"

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A bidder is responsible for ensuring that his bid is submitted in the form prescribed by an IFB and that it arrives at the proper place prior to bid opening. The record shows that the United States Postal Service advised the contracting officer that the established normal delivery time for mail between New Jersey and Hampton, Virginia, is 2 days. Thus, the receipt of Tower's bid (mailed April 19, 1976) on April 21, 1976, was within the standard delivery time and not late "due solely to delay in the mails for which [Tower] was not responsible." Tower's offer to send telegraphic confirmation of its intended bid was properly rejected since such a message at bid opening would have been a telegraphic bid rather than modification or confirmation of a bid timely submitted (i.e. received) in accordance with the solicitation. Neither the delayed receipt of Tower's bonding nor the subsequent offer of the unauthorized telegraphic bid constitute sufficient grounds for waiving the rule that a late bid may not be considered for award under conditions not specified by the solicitation. Although the Government may lose bids at prices allegedly lower than those timely received, the maintenance of confidence in the competitive bidding system requires that all bidders be treated equally through even application of the late bid rules. See 49 Comp. Gen. 191, 195 (1969); 50 Comp. Gen. 325, 326 (1970). Therefore, we must conclude that Tower's bid was properly rejected since it was late solely because of Tower's initial failure to allow sufficient time for delivery by mail.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States