

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

FILE: B-185507

DATE: April 6, 1976

60718

MATTER OF: Fred Schwartz--request for reconsideration

99104

DIGEST:

Upon request for reconsideration, prior decision holding late bid was properly rejected where late receipt did not result from mishandling by agency personnel is affirmed as protester has presented no new evidence demonstrating decision was based upon errors of fact or law.

By letter dated March 6, 1976, Mr. Fred Schwartz requested reconsideration of our decision Fred Schwartz, B-185507, March 1, 1976. Briefly stated, the facts in that case were as follows: The Defense Property Disposal Region, Defense Supply Agency (DSA), Ogden, Utah, solicited bids pursuant to invitation for bids (IFB) 41-6233, for the sale of various surplus items, with bid opening December 9, 1975. Although Mr. Schwartz's bid (mailed from Los Angeles) was postmarked December 6, 1975, it was not received by DSA at Ogden Station, Ogden, Utah, until December 10, 1975 (the bid envelope bears a December 10, 1975, DSA date stamp), 1 day after bid opening. DSA rejected the bid as late pursuant to Part 3, paragraph "C," of the Sale by Reference pamphlet (August 1973), incorporated by reference in the subject IFB, which provides:

"Bids and modifications or withdrawals thereof, must be in the possession of the Contracting Officer by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by the Contracting Officer prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Contracting Officer by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on

time. In no event will hand-carried bids or withdrawals be considered if delivered to the Contracting Officer after the exact time and date set for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received prior to award and may be accepted."

Mr. Schwartz's principal contention in his original protest was that his bid was late due solely to mishandling by DSA personnel and should therefore have been considered as timely. Mr. Schwartz alleged: (1) he mailed his bid at the World Airways Postal Station, Los Angeles International Airport, at 11 a.m. on December 6, 1975; (2) there were 17 mail flights between December 6, 1975, and December 8, 1975, from Los Angeles, California, to Salt Lake City, Utah, on which his bid could have been (mail going from Los Angeles, California, to Ogden, Utah, apparently moves by air from Los Angeles to Salt Lake City and by truck from Salt Lake City to Ogden); and (3) it usually takes 3 days for mail deposited prior to 5 p.m. at Los Angeles to travel from Los Angeles to Ogden. In support of these allegations, Mr. Schwartz submitted mail flight schedules of the United States Postal Service purporting to show the number of daily mail flights between Los Angeles and Ogden between December 6 and December 8, 1975.

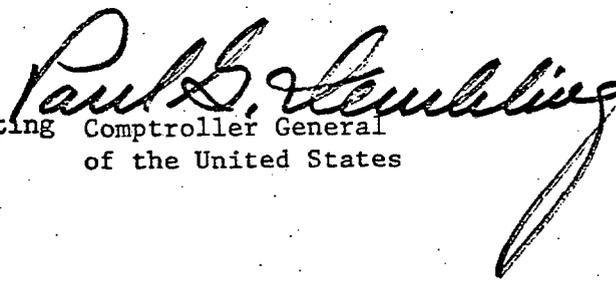
After reviewing the facts, and in view of the DSA date stamp on the bid envelope which indicated receipt of the bid by DSA on December 10, 1975, 1 day after bid opening, we held that, pursuant to Part 3, paragraph "C," supra, Mr. Schwartz had not established that his bid was, in fact, delivered to the specified address in the IFB in sufficient time to have been received by the contracting officer by the time and date set forth in the IFB for the bid opening. We concluded that the bid was not mishandled by personnel of the contracting activity sales office or their designees as Mr. Schwartz contended, but was delivered to Ogden Station after bid opening. As such, we found that Mr. Schwartz's bid was properly rejected by DSA as late (see cases cited in original decision).

In his request for reconsideration, Mr. Schwartz asks that we ascertain which party, DSA, Mr. Schwartz, or the United States Postal Service was responsible for the late arrival of the bid. However, Mr. Schwartz has submitted no new evidence in his request for reconsideration concerning the reason for the late receipt of his bid.

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As noted above, Part 3, paragraph "C," supra, provides for consideration of late bids only where bids have been " * * * received by the Contracting Officer prior to award, * * * and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Contracting Officer by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. * * *" Since we have concluded that the bid was not received by DSA until after bid opening, its late receipt was not due to mishandling by DSA personnel, and there is no new evidence indicating these conclusions are erroneous, it is irrelevant whether the delay in receipt of the bid was caused by Mr. Schwartz or the United States Postal Service since, in either case, the bid was required to be rejected as late. We therefore find it unnecessary to decide this question.

Since it has not been demonstrated that our decision was based upon any errors of fact or law, it is affirmed. § 20.9, Bid Protest Procedures, 40 Fed. Reg. 17979 (1975).


Acting Comptroller General
of the United States