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**DECISION**



*Hayfurther  
Proc 2*

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

**FILE: B-187322**

**DATE: February 28, 1977**

**MATTER OF: Surplus Tire Sales - reconsideration**

**DIGEST:**

Prior decision affirmed where "new" evidence fails to show any Government-caused delay in late receipt of bid modification was paramount reason for late receipt; therefore, failure to consider modification was proper.

By decision in Surplus Tire Sales, B-187322, December 13, 1976, 76-2 CPD 479, we held that where a Western Union-transmitted bid modification was received on a telex machine of the contracting activity at 1:16 p.m. on the August 13 bid opening date, and thus after the 9:00 a.m. bid opening time, that modification, as regarded item prices which would displace prices offered by other bidders if the modification were accepted, was properly not considered. In so holding we noted that Surplus Tire submitted no proof that the telex machines of the activity were not functioning on the night of August 12 - 13 and that, consequently, the unsuccessful Western Union attempt to transmit the modification that night might have been caused by that company's own machines. Finally, we noted that three bid modifications had been received on the telex machines prior to bid opening on the morning of August 13 and that had the Surplus Tire modification not stated that delivery of the modification had to be made prior to "9AM AUGUST 18, 1976," instead of August 13, Western Union might have acted with a bit more alacrity, and the modification would have properly been transmitted and received prior to bid opening. Therefore, we concluded that even assuming Government negligence, any Government-caused delay in receipt could not be considered to have been the paramount cause of the late receipt of the modification--the criterion which it is necessary to meet to permit consideration of a late modification in the case of mishandling during the process of receipt vis-a-vis mishandling after receipt. See S&Q Corporation B-186794, November 11, 1976, 76-2 CPD 402, Record Electric Inc., 56 Comp. Gen. 4 (1976), 76-2 CPD 315.

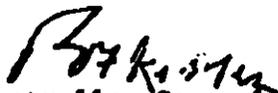
B-187322

Surplus Tire requests reconsideration of our decision on the basis that it was advised by a contracting officer at the contracting activity in question that the telex machines are shut off at 5:00 p.m. every evening and not turned on again until working hours begin once more at 7:00 a.m. every morning. It is contended that this is why Western Union was unable to transmit the Surplus Tire modification during the night of August 12 - 13, and explains why the modification of another bidder was not received until just before the bid opening time notwithstanding the fact that the modification had been given to Western Union during the late afternoon of August 12. Accordingly, Surplus Tire believes that our previous decision should be reversed so that it might receive awards on the items in question.

The contracting officer for the procurement in question advises that while the statement alleged was actually made, it was in error. The telex machines are in operation during the night, and, in fact, they are on a cable controlled by Western Union so that there is no way the contracting activity alone can turn them off.

Nonetheless, as stated in our prior decision, even assuming for the sake of argument Government negligence (e.g., that the telex machines were turned off during the period alleged), we do not believe that such negligence was the paramount cause of the late receipt of the modification for the reasons stated in that decision. As noted by the protester, a modification given to Western Union the day before bid opening was timely transmitted the morning of the bid opening, notwithstanding the alleged nonfunctioning of the telex machines during the night. It is apparent, therefore, that Western Union could have transmitted the Surplus Tire modification to the telex machines of the activity prior to bid opening and that the reason it did not do so was either its own fault or the fact that it believed no great urgency existed since the modification contained the statement that delivery was required before 9 a.m. on August 18, not on August 13.

Accordingly, upon reconsideration we affirm our previous decision.

  
Acting Comptroller General  
of the United States