

DOCUMENT RESUME

02701 - [A1812862]

[Bid Submitted Too Late for Consideration for Award]. B-188665.
June 22, 1977. 4 pp.

Decision re: Federal Contracting Corp.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law 1.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Department of the Army: Fitzsimons Army
Medical Center, CO.

Authority: A.S.P.R. 7-2002.2. 55 Comp. Gen. 220. 42 Comp. Gen.
508. 54 Comp. Gen. 959. B-185919 (1976). B-186848 (1976).
B-157156 (1965).

The protester objected to the determination that its bid was submitted too late for consideration for award. Since the agency failed to establish and implement procedures for the timely receipt of bids, a bid received after the specified deadline should have been considered for award. The only acceptable evidence to establish timely receipt is the time/date stamp of the Government installation on the bid wrapper or other documentary evidence of receipt maintained by the installation. The protest was sustained. (Author/SC)

2862
02701
DECISION



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

FILE: B-188665

DATE: June 22, 1977

MATTER OF: Federal Contracting Corporation

DIGEST:

1. Bid received after specified deadline should be considered for award where agency failed to establish and implement procedures for timely receipt of bids.
2. Where agency practice is not to accept special delivery mail on weekends and passive reliance is placed on routine deliveries to insure timely arrival of bids for Monday afternoon bid opening even though delays might be expected due to weekend mail buildup, agency has failed to meet standard required for effective establishment and implementation of procedures for timely receipt of bids.
3. Conflict between time/date stamp on return receipt and hand notation on bid envelope of time of receipt is resolved by IFB late bid clause providing that only acceptable evidence to establish timely receipt is time/date stamp of Government installation on bid wrapper or other documentary evidence of receipt maintained by installation.

The Federal Contracting Corporation (Federal) protests a determination that its bid was submitted too late for consideration for award under invitation for bids (IFB) DADA03-77-B-0488 issued by the Fitzsimmons Army Medical Center (FAMC) on February 18, 1977.

The IFB specified that bids would be received until 2 p.m., m.s.t., Monday, March 21, 1977, in the office of the Purchasing and Contracting Division (P&C), FAMC. Notations on the envelope for Federal's bid, sent by special delivery and certified mail on March 17, 1977, indicate that it was received by the Army post office, FAMC, at 2:40 p.m. on March 21 and was delivered to the P&C office at 2:50 p.m. The contracting officer determined that it was a late bid and could not be considered for award.

B-188665

The IFB incorporated the provisions of paragraph 7-2002.2 of the Armed Services Procurement Regulation (1976 ed.) entitled "Late Bids, Modification of Bids or Withdrawal of Bids." Under this provision, a late bid may not be considered unless it is received prior to award and either was mailed "* * * not later than the fifth day prior to the date specified for receipt of bids" or "* * * it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation." Late receipt of a bid ordinarily will result in its rejection unless the specific conditions set forth in the solicitation are met. B. E. Wilson Contracting Corporation, 55 Comp. Gen. 220 (1975), 75-2 CPD 145. Since it is uncontroverted that Federal's bid was not mailed in time to satisfy the first criterion above, under the terms of the solicitation its bid may be considered for award only if it is determined that the late receipt was due to mishandling by FAMC after receipt at the "Government installation." See The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21.

In this regard, the record indicates that Federal's bid was received in the Aurora, Colorado, office of the United States Postal Service (USPS) on Saturday, March 19, 1977, at about 5 p.m., but was not delivered to FAMC on either Saturday or Sunday, although a delivery of "perishables" consigned to the Clinical Investigation Service, FAMC, was made at 7:15 p.m. on March 19. The Aurora, Colorado, postmaster advised that no delivery was attempted because the FAMC duty officer on weekends "* * * would not accept any class or accountable 'specials' mail on Saturdays or Sundays except perishables." As a result of the inability of the Aurora USPS office to deliver Federal's bid directly to FAMC over the weekend, it was delivered to the USPS branch office at FAMC on Monday morning at 10 a.m., where it was held for delivery to the Army postal messenger. In this connection, we note that pickups of accountable mail from the USPS branch office by FAMC mail personnel normally were scheduled in the morning between 8-9 a.m. and in the afternoon between 1-2 p.m. We are advised that exceptions to this schedule occurred in instances of delays due to heavy mail volume or in the event of telephone notification by USPS personnel that they had an item of mail requiring immediate attention.

Federal's bid was not picked up by Army postal personnel until 2:30 p.m. on Monday and was delivered to the FAMC Army mail facility at 2:40 p.m., where the time and date of receipt were hand-recorded on the bid envelope. The bid was delivered to the contracting officer at P&C at 2:50 p.m., an elapsed time of 20 minutes from receipt by FAMC mail personnel.

B-188665

Federal contends that its bid was actually received by FAMC mail personnel at 10 a.m. on March 21 on the basis of a date/time stamp appearing on its return receipt for the bid in question. This stamp conflicts with the date and time hand-recorded on Federal's bid envelope. In explanation of the inconsistency, the FAMC mail officer advises that the date/time stamp is a manually adjusted device on which only the date is normally changed and that all mail was stamped as received at 10 a.m.

The IFB provision relating to late bids, noted above, provides in pertinent part that:

"(c) The only acceptable evidence to establish:

* * * * *

"(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained at the installation."

Under this provision, Federal's bid receipted on the envelope at 2:40 p.m. was not timely received. B. E. Wilson Contracting Corporation, supra. We conclude therefore that the delay in delivery of Federal's bid was not due to mishandling after receipt at the Government installation.

Federal, in a letter dated April 13, 1977, also contends that FAMC prevented timely delivery of its bid by refusing to accept special delivery mail on the weekends. We have long recognized the obligation of the Government to establish and implement procedures to insure that the transmission of bids from one place to another will not be unreasonably delayed and have distinguished between delays resulting from mishandling after receipt at the Government installation from those attributable to mishandling during the process of receipt. 42 Comp. Gen. 508 (1963); Record Electric, Inc., B-186848, October 6, 1976, 76-2 CPD 315; Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD 331. In Record Electric, Inc., supra, we stated our position that, in unusual cases like this, the mishandling in the process of receipt by the Government must be paramount in the failure of a bid to be received on time.

B-188663

In B-157156, August 30, 1963, we held that a bid should be considered for award where the post office attempted delivery of an airmail special delivery bid on Sunday, the day before bid opening, and instructions at the Government installation precluded guards from accepting mail so that the post office had to redeliver the bid the next day and failed to do so until after bid opening. This decision is controlling here.

We note particularly that P&C personnel placed passive reliance on the Postal Service to timely deliver bids for a Monday bid opening after a weekend when delivery of such mail was made impossible by FAMC and when the normal course of delivery might well be expected to be delayed due to mail buildup over the weekend. In these circumstances, we think that FAMC personnel were, at the least, obligated to make timely inquiry of the USPS regarding the possibility of additional bids. No such action was taken. We consider the agency's conduct in these circumstances to fall short of the standard required for the effective establishment and implementation of procedures for the receipt of bids and regard such failure as the paramount cause of delay.

We therefore sustain the protest. Federal's bid should be considered for award.

We note parenthetically that FAMC has changed its practice of nonacceptance of accountable mail on the weekends and we have been advised that the FAMC mail facility is now stamping the correct time on receipted mail which should eliminate the possibility of recurrence of matters of this nature.


Deputy Comptroller General
of the United States