

DOCUMENT RESUME

03301 - [A2313437]

[Protest to Consideration of Misfiled Bid]. H-109232. August 16, 1977. 5 pp.

Decision re: Prime Mfg. Corp.; by Robert P. Keller, Deputy Comptroller General.

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

Organization Concerned: Bureau of Land Management; Midstates Fire Truck Co.

Authority: F.P.R. 1-2.303-2, 1-2.303-3. 55 Comp. Gen. 1340. B-186390 (1976). B-188486 (1977). B-181914 (1978).

The protester objected to consideration of another firm's lower bid discovered the morning after bid opening and determined by the agency to have been late solely because of Government mishandling. The bid may be considered for award because a time/date stamp established timely receipt. Other issues raised were untimely or had no basis for rejection of bid. (HTW)

3437

03301

M. Eaton  
Proc II

**DECISION**



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

**FILE: B-189232**

**DATE: August 16, 1977**

**MATTER OF: Prime Manufacturing Corporation**

**DIGEST:**

1. Misfiled bid, found in safe on morning after bid opening, may be considered for award when time/date stamp establishes timely receipt at Government installation. Fact that another misfiled bid was found before bid opening supports agency's conclusion that late receipt was due solely to mishandling by Government.
2. Issue regarding propriety of consideration of 1 percent - 20 day discount offered in evaluation of bids is untimely raised and not for consideration, as issue was apparent from face of solicitation but not raised until after bid opening.
3. Fact that low bidder offered identical price for varying sizes of tanker units affords no basis for rejection of bid.

Prime Manufacturing Corporation (Prime), the low bidder at the time of bid opening under solicitation No. YA-512-IFB7-41, issued by the Department of the Interior's Bureau of Land Management (BLM), Denver, Colorado, has protested consideration of another firm's lower bid, discovered the morning after bid opening and determined by BLM to have been late due solely to mishandling by the Government.

The invitation for bids (IFB) was issued April 22, 1977. It covered 33 slip-on tanker units, each consisting of a portable tank, pump and power unit, hose, hose reel, and accessories, in 75, 125, and 200 gallon capacities. These are mounted on pickup trucks and used by BLM for patrol and fire fighting. Award was to be made to the qualified bidder who offered the lowest total preproduction model. BLM required delivery in various Western states within 60 days.

B-189232

Bid opening was scheduled for 2:30 p.m. on May 18, 1977. At 10:30 that morning, the contracting officer reports, bids which had been received were checked and one was found with bids for a different solicitation. All groups of bids were therefore checked, and all bids for this particular procurement were put into one file folder. About 2:15 p.m. these were removed from the procurement office safe and the bids were segregated from "no bid" responses; incoming mail also was checked before the opening at 2:30 p.m. Sometime later the same afternoon a representative of Prime called and was told that his firm was the low bidder.

About 9 a.m. the next day, according to the contracting officer, a bid from Midstates Fire Truck Co. (Midstates) was found in the safe with another group of bids. The time/date stamp showed that it had been received at BLM at 8:10 a.m. on May 18, 1977, and mailroom personnel confirmed that the stamp machine had been operating properly at that time. BLM found that Midstates' bid had been mishandled by the Government and could be considered for award; the bid therefore was opened and recorded in the abstract of bids.

After being notified on May 20, 1977, that award to Midstates was contemplated, Prime protested to our Office. Prime argues that its bid became public knowledge at the time of bid opening and that any bid not opened at the same time should be considered nonresponsive. BLM has delayed award pending our decision on the protest.

The issue here is whether Midstates' late bid was properly considered. The IFB contained the following language, incorporated pursuant to Federal Procurement Regulations § 1-2.303-2 and 1-2.303-3 (1964 ed.):

**Time, Offers and Modifications or Withdrawals.**

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

B-189232

(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

\* \* \* \* \*

(c) The only acceptable evidence to establish:

\* \* \* \* \*

(2) 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 by the installation. \* \* "

Our Office has construed identical language as authorizing consideration of bids which arrived at a Government installation in time to have been delivered to the office designated in the IFB, but which did not reach that office until after bid opening because of mishandling after receipt. I & E Construction Company, Incorporated, 55 Comp. Gen. 1340, 1342 (1976), 76-2 CPD 139, and cases cited therein. We look at procedures for transmitting bids from place of receipt to bid opening office, relying on the procuring agency to determine what constitutes a reasonable time for such transmittal, and consider any special circumstances which may have affected the delivery period. Frequency Engineering Laboratories, B-186390, August 17, 1976, 76-2 CPD 166.

In the instant case, the time/date stamp on the bid envelope, which has been entered in the record, clearly establishes timely receipt at BLM's mailroom, and from 8:10 a.m. to 2:30 p.m. appears to have been sufficient time for transmittal to the bid opening room. While we cannot say precisely when it actually was delivered to the bid opening room, the discovery of another misfiled bid before bid opening supports BLM's conclusion that Midstates' bid also was misfiled. See Cummins-Wagner Co., Inc., B-188486, June 29, 1977, 77-1 CPD 462. Further, the language of the late bids clause is disjunctive, e.g. there is no requirement that a mishandled bid be sent by registered or certified mail in order to be considered if it is received late. We therefore find that Midstates' bid was properly considered for award.

B-169232

By letter dated July 27, 1977, Prime raised three additional issues. First, Prime stated that Midstates' offered 1 percent - 20 day prompt payment discount should not be considered in the evaluation of bids because Prime had been told that BLM "will not consider a discount of less than 30 days [because it is] virtually impossible to process a receiving form from the field to Denver and issue payment in less than 20-25 days."

The identical issue was presented in Paul's Line, Incorporated, et al., B-181914, October 9, 1974, 74-2 CPD 201. In that decision we held that where, as here, the solicitation specifically contemplates the consideration of prompt payment discounts offered in the evaluation of bids submitted, it is incumbent upon the protester to question the propriety of such a provision prior to bid opening. Since Prime did not make this allegation until over two months after bid opening, it is untimely and not for consideration on the merits.

Prime also notes that Midstates bid the identical price for all of its units, whereas the other two bidders had a "sliding scale" of prices in which prices increased in relation to unit size. Prime argues that Midstates' pricing technique is "unfair" to those BLM activities who ordered the smaller units.

We do not believe Midstates' uniform pricing affords any basis for the rejection of its bid. There is nothing in the solicitation which prohibits bidders from bidding on this basis. (Even those bidders who used a "sliding scale" made moderate adjustments to their bids: Prime's largest, most expensive unit was priced less than 10 percent above its smallest unit, and Almont Welding Works' largest unit cost less than 2 percent more than its smallest unit.) Furthermore, the IFB provided that "one (1) award will be made to the qualified bidder who offers the lowest total cost to the Government, based upon the unit price quoted for slip-on tanker units which meet the specifications, terms and conditions \* \* \*." (Emphasis added.) Midstates submitted the lowest total bid.

Finally, Prime suggests that as the result of the delay caused by its protest, these units cannot now be produced for the 1977 fire season. Prime suggests the solicitation be canceled and that these units be combined with next year's requirements in a new solicitation.

B-189232

Prima's arguments concerning the propriety of considering Midstates' bid, discussed above and found to be untimely or without merit, do not present any basis for cancellation of the IFB and re-solicitation. With regard to Prima's last contention, we have been advised by BLM that its needs require it to proceed with this year's procurement. We believe this to be a matter within the agency's discretion, and in the absence of a showing that the agency has exercised that discretion in an arbitrary or unreasonable fashion, we do not perceive a compelling reason for cancelling the solicitation and re-advertising the requirement.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

*Eaton*  
*P.L. #2*

OFFICE OF GENERAL COUNSEL

*Filed* IN REPLY  
REFER TO

B-189232

AUG 24 1977

Prime Manufacturing Corporation  
70 Linden Street  
Reno, Nevada 89505

Attention: James E. Maxine  
General Manager, Western Region

Gentlemen:

In our decision concerning Prime Manufacturing Corporation,  
B-189232, August 16, 1977, one line was inadvertently omitted.  
For your information, a corrected page one is enclosed.

Sincerely yours,

John F. Mitchell

John F. Mitchell  
Deputy Assistant General Counsel

Enclosure