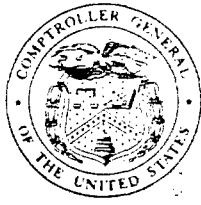


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Respectfully

DECISION



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

FILE: B-194361

DATE: October 17, 1979

MATTER OF: Woodbridge Cleaners, Inc.

DIGEST:

*[Protest Alleging Awardee's Bid Was Received Late and Should Not Have Been Considered]*

Where only evidence as to whether certified mail containing sealed bid arrived at installation post office before bid opening time for purpose of establishing Government mishandling is after-fact statement of installation postal officer, requirement that only documentary evidence maintained by installation may be used to establish acceptability of late bid is not met and award made on late bid should be terminated.

*DLG03085*  
Woodbridge Cleaners, Inc. (Woodbridge), protests an award made to Banner Hamilton Dry Cleaners (Banner) by the Procurement Division, Fort Belvoir, under invitation for bids (IFB) No. DABT56-79-B-0011 for dry-cleaning services to be ordered through March 31, 1980. *DLG03084*  
Woodbridge maintains that the Banner bid was received late and, therefore, should not have been considered for award. *DLG03086*

Banner mailed its bid by certified mail, return receipt requested, on February 2, 1979. On the face of the envelope the bidder indicated that the envelope contained a sealed bid submitted under the above-cited invitation. Also set forth on the envelope were the bid opening date and time--February 5 at 2:30 p.m.

According to the president of Banner, the return receipt was dated February 5. The Fort Belvoir installation postal officer stated that because the installation post office is not open over the weekend it is the practice to pick up first all regular, nonspecial mail (which accumulates over the weekend) from the United States Postal Service (USPS) post office (which is

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located in the same building as the installation post office). That mail is sorted and sent out for delivery. Only then, in this instance between 10 a.m. and 12 noon according to the installation postal officer, is the special mail (including certified) picked up from the USPS post office. This mail is recorded (the date of February 5 is on that document) and sorted out for delivery. The receipt of each piece of special mail is verified by the installation postal officer at the close of business on the day of its receipt by examining the remaining special mail or a receipt signature from the addressee. Between 4:15 and 4:30 p.m. on February 5, the installation postal officer discovered the Banner bid undelivered, but because he saw that the bid opening had already taken place he waited until the morning of February 6 before he had it delivered to the contracting activity.

It is the position of the contracting activity that the late bid was acceptable even though the only activity date/time stamp on the bid envelope was that of February 6/9:13 a.m. which was imprinted upon receipt by the contracting activity. The contracting activity relies upon the portion of the IFB late bid clause which provides:

"(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 \* \* \*

\* \* \* \* \*

"(ii) it was sent by mail \* \* \* 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."

The activity believes that the evidence available to prove Government mishandling meets the late bid clause requirement 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 by the installation."

The activity also notes that our Office has stated that the Government owes to all prospective bidders a duty to establish procedures calculated to insure that the physical transmission of bids from one place to another will not be unreasonably delayed. See 42 Comp. Gen. 508 (1963) and 49 Comp. Gen. 697 (1970). It is concluded that this duty was not met since it would have taken the personnel of the installation post office no more than 5 minutes to have properly delivered the bid and that Government mishandling caused the late receipt of the bid.

However, the only evidence acceptable to establish the time of receipt at the Government installation is the time/date stamp on the bid wrapper or "other documentary evidence maintained by the installation" and this means "contemporaneous evidence rather than after-the-fact affidavits, for example." B. E. Wilson Contracting Corp., 55 Comp. Gen. 220, 75-2 CPD 145; Instrumentation and Mechanical Systems, Inc., B-189739, October 25, 1977, 77-2 CPD 325; Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351. Valid policy reasons require the strict application of the rules governing late bids even though in certain instances a strict application might operate harshly. B. E. Wilson Contracting Corp., supra.

In this case, the only documentary evidence of receipt maintained by the installation is the date/time stamp (February 6/9:13 a.m.) of the contracting activity and the February 5 date on the document used by the installation post office personnel to record the receipt of the special mail. On the latter document, there is no record to indicate that the installation post office received the special mail prior to bid opening. The only evidence as to what time the

installation post office received the special mail on February 5 is contained in the after-the-fact statement of the installation postal officer. As indicated above, such statements are not acceptable under the documentary evidence requirement of the late bid clause.

Citing Federal Contracting Corporation, B-188665, June 22, 1977, 77-1 CPD 444, it has been suggested that the bid may have been late due to defects in the procedure for handling bids, as opposed to mishandling after the receipt of the bid. It is stated that giving priority treatment to regular mail instead of to special mail and the absence of a procedure requiring an inquiry before bid opening by procurement personnel to postal personnel as to whether they had any bids, may have been mishandling in the process of the receipt of the bid. However, notwithstanding the foregoing, there is no conclusive evidence that the process was the paramount cause for the delay.

Moreover, acceptable evidence does not establish that the late receipt of the Banner bid was caused by Government mishandling after the receipt of bids. Therefore, the contract awarded Banner should be terminated and the Woodbridge bid should be considered for award. Accordingly, the protest is sustained.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. 1176 (1976), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendations.

*Harvey D. Van Cleave*  
For Comptroller General  
of the United States

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