

DECISION

12433

Feldman

Proc II

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

FILE: B-195589

DATE: January 4, 1980

MATTER OF: Lockley Manufacturing Co., Inc. DLG03350

DIGEST:

1. Bid was not late because evidence clearly shows it arrived by certified mail at the Government office designated in solicitation for receipt of bids (bid opening room) before bid opening but was not time/date stamped until after bid opening. Exemption in late bid clause for bid arriving late because of Government mishandling after receipt of bid at Government installation has no application to case.
2. Where issue involves whether bid arrived on time in designated office before bid opening all evidence in the record, aside from that furnished by bidder, may be considered.

DLG03558

Lockley Manufacturing Co., Inc. (Lockley), protests the consideration of Gayston Corporation's (Gayston) lower bid under invitation for bids (IFB) N00104-79-B-0631, issued by the Navy Ships Parts Control Center, A6C00238 Mechanicsburg, Pennsylvania (SPCC). For the following reason, we deny the protest.

Gayston's bid was stamped as received in the bid opening room at 11:56 a.m. June 25, while bid opening was scheduled for 11:15 a.m. on that date. Lockley argues that, under the Defense Acquisition Regulation (DAR), the time/date stamp is the only acceptable evidence to establish the time of receipt at the installation or bid opening room. Lockley maintains that there is no other documentary evidence establishing that the Gayston bid arrived at the installation before bid opening and, therefore, Gayston's bid is late and cannot be considered for award.

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[Protest Involving Bid Arrival Time]

The Navy submits that the evidence in the record conclusively shows that the Gayston bid was physically in the designated office before bid opening and, therefore, is not a late bid. Thus, the Navy maintains that our inquiry is not confined to documentary evidence such as the time/date stamp but that all other evidence may be considered to show that the Gayston bid was not late. We agree.

Defense Acquisition Regulation (DAR) § 7-2002.2 (1976 ed.) delineates the conditions for consideration of late bids. It 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 either:

* * * *

"(ii) 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

* * * *

"(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." (Emphasis supplied.)

Where a bid arrives in the office designated in the IFB for receipt after bid opening, before we can

consider the question of Government mishandling, the time of receipt at the installation must be established. B. E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145. The regulation provides and we have consistently held that the only acceptable evidence of receipt at the Government installation is the time/date stamp or other documentary evidence of receipt maintained by the installation. See, e.g., B. E. Wilson Contracting Corp., supra; Lambert Construction Company, B-181794, August 29, 1974, 74-2 CPD 131.

In this case, however, the question is not whether a late bid was mishandled after its receipt at the Government installation. (The Navy states that the Gayston bid was not mishandled prior to its receipt in the bid opening room.) The issue here is whether or not Gayston's bid was received late in the designated office. See Building Maintenance Corporation, B-196081, November 27, 1979, 79-2 CPD ; Daymar, Inc., B-188701, August 8, 1977, 77-2 CPD 88; B-171322, December 23, 1970.

In this situation, therefore, we are not constrained, as the protester maintains, by the strict evidentiary requirements of the DAR provision quoted above, i.e., "time/date stamp or other documentary evidence." See Building Maintenance Corporation, supra. Our primary objective, however, is to maintain the integrity of the competitive bidding system "to prevent opportunities for fraud or undue advantage which might be obtained if bidders could submit their bids after the time set for bid opening." 40 Comp. Gen. 709, 710-711 (1961). We believe, therefore, that we may consider all of the evidence in the record, aside from that furnished by the bidder, to establish whether the Gayston bid was in the designated office before bid opening. See Building Maintenance Corporation, supra; Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351; Free State Builders, Inc., B-184155, February 26, 1976, 76-1 CPD 133.

In Adrian L. Merton, Inc., supra, a case analogous to the situation here, a mailed bid not sent registered or certified was discovered in the designated office

one-half hour after bid opening. We concluded that the evidence failed to show conclusively how and when the bid was placed in the unsorted mail delivered prior to bid opening, because no individual at the installation could personally attest to these facts. The clerk who sorted this mail left the designated office (procurement branch) shortly before bid opening, leaving the mail unattended until she returned from the bid opening. Thus, we held that the bid was late and could not be considered for award under the DAR mishandling exception.

In this case, the IFB designated the bid opening room as the place for receipt of bids. In a sworn affidavit, the bid opening clerk states that she was in the bid room (office designated in the IFB) from the time it opened until the close of business, that registered and certified mail was delivered to the bid opening room at approximately 11:00 a.m., that no other registered or certified mail was delivered to the bid room on June 25, that she signed the mail receipt form and began to time/stamp the mail. At 11:15 a.m., the time scheduled for bid opening, the clerk put this mail aside in order to conduct formal bid opening. Subsequent to the bid opening, the remaining registered and certified mail, including the Gayston bid and the protester's acknowledgment of amendment 3 was time/date stamped as received at 11:56 a.m. The clerk affirmatively states that the Gayston bid was in the bid room before bid opening.

We believe that the facts of this case are distinguishable from those in Adrian L. Merton, Inc., supra and clearly establish that Gayston's bid arrived in the designated office/bid opening room before bid opening with other mail and remained in the exclusive control of the Government.

Gayston's bid was sent by certified mail only four rather than five days before bid opening and therefore could not, in any event, be considered under an exemption in the late bid clause for certified mail sent five days prior to bid opening. The statement of the bid opening clerk establishes that all certified and registered mail

received on June 25, including the Gayston bid, was delivered to the bid room/designated office before the 11:15 bid opening and that no other delivery of such mail was made after that time on that date. In this connection, a record and receipt form prepared by the installation mail clerk prior to delivery to the bid room was signed by the bid opening clerk. This log lists the registered number of each piece of mail received and the sender. In this case, it shows the certified mail number of the Gayston bid and therefore proves that the bid was received along with other mail delivered to the bid room on the bid opening date. Precisely at 11:15 a.m. the door to the bid opening room was locked and access to the bid room was restricted. The mail in the bid room was not removed from the clerk's sight, although Gayston's bid was not identified as such before 11:15 because the clerk had to stop sorting and stamping the mail in order to proceed with the 11:15 bid opening. As a result, Gayston's bid and the protester's acknowledgment of an amendment were time/date stamped in the bid room at 11:56 a.m.

It is clear that Gayston's bid was received in the bid room prior to bid opening time and that the time/date stamp on the bid envelope as well as the time/date stamp on the protester's amendment acknowledgment do not reflect the time of actual receipt in the bid room.

The protest is therefore denied.

Shilton J. Sosler
For The Comptroller General
of the United States