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DECISION



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

FILE: B-197613

DATE: May 19, 1980

MATTER OF: Robert McMullan & Son, Inc.

[Protest Against Late Bid] DLG 04659

DIGEST:

1. Low bid mailed on January 18, received and date-stamped on January 21 by Government installation (3 days before bid opening), is timely and for consideration even though it was inadvertently left in bid box at bid opening and discovered after bid opening.
2. Procurement activity's report need not be comprised in part of sworn statements where there is no reason in record to challenge veracity of report. Moreover, neither GAO procedures, 4 C.F.R. part 20 (1980), nor procurement regulations (DAR § 2-407.8) require sworn statements.
3. Bid was mailed January 18. Bid bond was dated January 19. Inconsistency is of no serious consequence since bid bond was properly included with timely bid.

The Department of the Navy (Navy) issued invitation for bids (IFB) N62474-77-B-2140 for the installation of a municipal sewer connection at Fallbrook Annex, Fallbrook, California. Bids were opened and abstracted on January 24, 1980. Robert McMullan & Son, Inc. (McMullan), submitted the low bid of \$264,474.

After bid opening, a representative of Yucca Construction Corporation (Yucca) called the contracting officer concerning the results of the bidding. When informed that no bid had been received from Yucca, the representative stated that the bid had been mailed in sufficient time and was in the amount of \$230,000. The Navy investigated Yucca's allegation and found that Yucca's bid had been accidentally

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left in the bid box. The contract was awarded to Yucca during the pendency of McMullan's protest.

McMullan protests as follows:

1. Yucca's bid was late. It is incredible that its bid was left in the bid box.
2. The Navy should be required to provide GAO with sworn affidavits setting forth pertinent information.
3. Yucca's bid was ostensibly postmarked on January 18, 1980; yet, its bid bond was dated January 19, 1980.

Under the late bid clause included in the invitation, any bid received at the designated office after bid opening but before award may be considered if it is determined that the late receipt was due solely to Government mishandling after receipt at the Government installation. Further, the time of receipt at the Government installation is established by the time-date stamp of the installation.

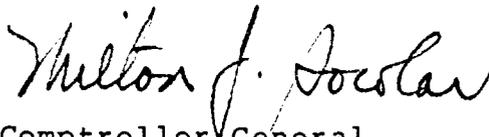
Where a bid has been left in a bid box and there is no independent evidence when it was deposited, we have stated that the bid should not be considered. We have taken this position to maintain the integrity of the competitive bidding system. Free State Builders, Inc., B-184155, 8 February 26, 1976, 76-1 CPD 133.

This case is distinguishable, however, since the bid was mailed on January 18 and received and date-stamped by the procuring activity on January 21, 3 days before bid opening. It is clear, therefore, that under the late bid clause of the invitation, Yucca's bid was timely received at the Government installation and properly for consideration thereunder, whether it was inadvertently left in the bid box as the Navy says and McMullan questions, since even late receipt in the designated office would be attributable to Government mishandling. Therefore, we find the bid timely and its acceptance proper. Prime Manufacturing Corporation, B-189232, August 16, 1977, 77-2 CPD 122.

We fail to see the need for sworn statements by the Navy. Based upon the record before us, we find no reason to challenge the Navy's veracity. Further, neither GAO procedures nor procurement regulations require that the procuring activity submit sworn statements. See 4 C.F.R. part 20 (1980); section 2-407.8 of the Defense Acquisition Regulation (1976 ed.).

There is no logical explanation in the record as to why the bid was postmarked on January 18 and the bid bond was dated January 19. However, this is of no serious consequence, since this bid bond was properly included with the timely submitted bid.

The protest is denied.



Acting Comptroller General
of the United States