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DECISION



Dampster 21040
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-204665

DATE: March 8, 1982

MATTER OF: Tri-States Service Company

DIGEST:

Protest against the contracting agency's rejection of the fifth low bidder's bid modification as late is academic and will not be considered, since the bid would not have been low even if the modification had been accepted.

Tri-States Service Company (Tri-States) protests the rejection of its bid modification as late under invitation for bids (IFB) DADA03-81-B-0026, issued by the Department of the Army for laundry and linen service at Fitzsimons Army Medical Center in Colorado. Tri-States sent the bid modification by mailgram on the Friday evening before the Tuesday bid opening, but the modification was received more than five hours after bids were due, according to the agency time/date stamp on the mailgram. Tri-States asserts that the late recorded receipt must have been caused by Government mishandling after timely receipt of the mailgram elsewhere at the installation.

We dismiss the protest.

Tri-States' bid was the highest of the five received by the bid opening time. Even if the firm's modification was considered in the selection decision, Tri-States would have been only the third lowest bidder. The contract in a formally advertised procurement must be awarded to the responsible firm that bid the lowest price. See Tennessee Valley Service Company, B-188771, July 20, 1977, 77-2 CPD 40. In this regard, the agency advises that the low bidder has been found to be responsive and responsible, and that award has been made. Since Tri-States would not have been in line for award in any case, the question whether it was proper for the agency to reject the firm's late bid modification is academic, and will not be considered.

Tri-States also suggests that section 7-2002.2 of the Defense Acquisition Regulation (DAR), which governs the acceptability of late bids and modifications, be revised with respect to mailgrams. The regulation currently allows consideration of a late bid or modification that was sent by mailgram only if the late receipt was due solely to mishandling by the Government after receipt at the Government installation. The only acceptable evidence of such receipt is the installation's time/date stamp on the wrapper or other documentary evidence of receipt maintained by the installation. The protester recommends that the regulation be amended to permit the acceptance of a late bid that was sent by mailgram if it was sent not later than the third day before bid opening, with the automatic date indication on the mailgram accepted as evidence of the date of transmission.

Our Office, however, does not have the authority to revise the DAR, and therefore we cannot act on Tri-States' suggestion. The firm instead should raise the matter with the appropriate regulatory bodies for consideration.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel