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DECISION



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

FILE: B-204869

DATE: April 7, 1982

MATTER OF: Keco Industries, Inc.

DIGEST:

1. Contracting agency determined that protester's telegraphic bid modification was untimely because it was time/date stamped over an hour after bid opening. Protester alleges that bid modification was timely but not promptly time/date stamped by contracting agency as required by telegraphic bid receipt procedures. Protester has not met its burden of proof because record contains insufficient evidence to show that time/date stamp is inaccurate.
2. Protester was not prejudiced by contracting agency's failure to promptly notify protester that its telegraphic bid modification was late as required by DAR § 2-303.2 (1976 ed.), where protester's late bid modification was not otherwise for consideration.

Keco Industries, Inc. (Keco), protests the rejection of its bid modification as late and the award of a contract to Unifab Industries, Inc., for 234 air conditioners and associated technical data under solicitation No. DAAJ09-81-B-1043 issued by the United States Army Troop Support and Aviation Materiel Readiness Command (TSARCOM).

Bid opening was scheduled for 1:30 p.m. central daylight time (CDT) on July 30, 1981. Keco submitted a telegraphic bid modification which lowered its price by \$400. Keco claims the telegram was dispatched and received at 2:09 p.m. eastern daylight time (EDT) (1:09 p.m. CDT), 21 minutes prior to bid opening. TSARCOM's Communication Center's procedure for receiving a message is to remove the message from the equipment upon receipt, time/date stamp it, log it, and notify the addressee. TSARCOM did not consider Keco's bid modification because it was time/date stamped at

2:31 p.m. CDT, over an hour after bid opening. The contract was awarded to Unifab Industries, Inc., as the low responsive, responsible bidder. Keco was not notified until September 15, 1981, that its bid modification was recorded late and not considered.

Keco contends that its modification arrived at TSARCOM 21 minutes before the 1.30 p.m. CDT bid opening. Keco asserts that the 2:30 p.m. CDT time/date stamp is a result of TSARCOM's failure to remove and stamp Keco's bid modification upon receipt. Keco contends that the bid modification made Keco the low responsive, responsible bidder. TSARCOM denies that its time/date stamp is inaccurate and contends that even if Keco's bid modification was not late, Keco would not be the low bidder. Because we find that Keco's bid modification was late, we need not consider whether Keco would have been the low bidder.

The IFB included the clause entitled "LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 MAR)" which incorporates Defense Acquisition Regulation (DAR) § 7-2002.2 (1976 ed.). The clause 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 * * *
- * * * * *
- "(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.
- "(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above * * *

"(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."

Under the terms of the clause, a late modification is one received in the office designated in the IFB after the exact time set for opening. Keco's modification was determined late because it was time/date stamped more than 1 hour after 1:30 p.m. CDT time set for opening.

The clause nevertheless permits a telegraphic bid modification not received prior to bid opening to be considered if it is received prior to award and the Government determines that late receipt was due solely to Government mishandling after receipt at the Government installation. However, the time of receipt at the installation must be established before considering the question of Government mishandling. The only acceptable evidence of receipt at the Government installation under DAR § 7-2002.2 is the time/date stamp or other documentary evidence maintained by the installation. λ-Tyal International Corp., B-202434, January 7, 1982, 82-1 CPD 19; United Baeton International, B-200721, February 2, 1981, 81-1 CPD 59; Lambert Construction Co., B-181794, August 29, 1974, 74-2 CPD 131.

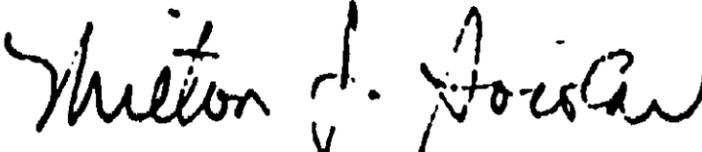
Keco supports its assertion that the bid modification was received at 1:09 p.m. CDT with Western Union records. We have repeatedly stated that records maintained by Western Union as proof of the inaccuracy of a time/date stamp are unacceptable. Monitor Northwest Co., B-193357, June 19, 1979, 79-1 CPD 437; B.F. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145; Lambert Construction Co., supra. The evidentiary restriction to consideration of the time/date stamp will be relaxed where there is proof that Government mishandling in the process of receipt was the paramount cause for late receipt or nonreceipt

at the installation. Under such circumstances, timely receipt may be established by reference to other reliable evidence not under the bidder's control. X-Tyal International Corp., supra. However, this exception to reliance on the time/date stamp as to the time of receipt is not for application because Keco has neither alleged, nor does the record demonstrate, that mishandling in the receipt of the modification was the paramount cause for late receipt. Since the time/date stamp showed the time of receipt as 2:31 p.m. CDT, the bid modification was late and properly not considered.

Keco cites Condor Industries, Inc., B-203545, October 21, 1981, 81-2 CPD 326; and 35 Comp. Gen. 468 (1956). These decisions are inapplicable to the instant case. Condor Industries involved a bid that was mishandled by the Government after it was time/date stamped an hour and 20 minutes before bid opening by the office designated in the solicitation for receipt of bids. Unlike the instant case, no dispute existed in Condor as to timely receipt at the Government installation. In 32 Comp. Gen. 468 (1956), we applied an IFB clause which permitted late telegraphic bids if they were late because of a delay beyond the normal transmission time. No similar clause is contained in the instant solicitation.

Keco also contends that TSARCOM failed to comply with DAR § 2-303.2 (1976 ed.), which requires that a bidder be promptly notified that a bid or modification was received late and will not be considered. We agree with Keco that TSARCOM was deficient in this respect. Nevertheless, because TSARCOM's refusal to consider Keco's late bid modification was proper, Keco was not prejudiced by this failure even though it was precluded from filing a preaward protest. Infinity Corp., B-202508.3, July 17, 1981, 81-2 CPD 45.

Keco's protest is denied.

for 
Comptroller General
of the United States