

24453

**DECISION**



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

**FILE:** B-209296

**DATE:** March 8, 1983

**MATTER OF:** Parmatic Filter Corporation

**DIGEST:**

1. Contracting agency rejected protester's telegraphic bid because time printout applied immediately after bid was received indicates that bid arrived 2 minutes after bid opening. The protester fails to show the printout is inaccurate. The protest is denied.
2. Importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement by considering late bid.
3. Protester which submitted late bid was not prejudiced by solicitation cover sheet, which erroneously identified solicitation as negotiated procurement. Moreover, discrepancy apparent on the face of solicitation is untimely when not filed before bid opening.

Parmatic Filter Corporation (Parmatic) protests the Department of the Navy's, Navy Ships Parts Control Center (SPCC), rejection of its telegraphic bid as late under invitation for bids (IFB) No. N00104-82-B0859. Parmatic also protests that the solicitation cover sheet identified the solicitation as a negotiated request for proposals (RFP), while the following page identified the solicitation as an advertised IFB.

The protest is denied.

Bid opening was at 11:15 a.m. eastern daylight time on September 17, 1982. Parmatic contends that it sent its telegraphic bid at 11:12 a.m. and argues that it should have arrived at SPCC at the same time. SPCC responds that Parmatic's telex was received on the SPCC terminal at 11:17 a.m. The SPCC telex operator, aware that the bid opening was to be held at 11:15 a.m., immediately contacted

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Western Union by dialing a four-digit number for a date/time printout on the bottom of the telex. SPCC contends the date/time printout was received from Western Union's computer within 2 to 3 seconds after contact and is shown on the telegraphic bid as "1017 EST" (eastern standard time). This time is identical to 11:17 a.m. eastern daylight time. The SPCC operator immediately hand-carried Parmatic's bid to the bid opening room where bid opening was in process.

Under the terms of Defense Acquisition Regulation (DAR) § 7-2002.2 (Defense Acquisition Circular No. 76-18, March 12, 1979), incorporated by reference into the IFB, a late bid is one received in the office designated in the IFB after the exact time set for bid opening. Further, the time of receipt is determined by the time/date stamp of the installation or other documentary evidence of receipt maintained by the installation. SPCC contends that the Western Union time/date printout provides clear documentary evidence that Parmatic's bid arrived after bid opening.

Parmatic contends the printout is not evidence of the bid's arrival. Parmatic has submitted a telex from Western Union which states:

"By dialing the four digit WU infomaster number, you will within two to three seconds, receive a connection number and the time based on the 2400 Clock EST. The last three digits of the connection numbers are the Julian date.

"This printout is in no way proof of when a previous message was received."

Strictly speaking, this statement is correct: the printout is proof of when the four-digit number was dialed rather than when the telex arrived. However, it logically follows that if the SPCC operator dialed the number immediately after receiving Parmatic's bid, the printout gives credence that the time of receipt was 11:17 a.m.

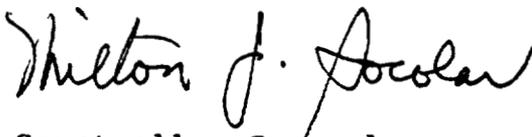
The protester has the burden of affirmatively proving its case. Parmatic has not proven that the Western Union computer was inaccurate, nor that the SPCC operator did not

immediately apply the printout to the bid. Parmatic instead attempts to shift the burden of proving the accuracy of the printout to SPCC. While Parmatic claims to have sent its bid at 11:12 a.m., we conclude on the record before us that the bid was late because it did not arrive at SPCC until 11:17 a.m. See X-Tyal International Corporation, B-202434, January 7, 1982, 82-1 CPD 19. It was Parmatic's responsibility to assure the timely arrival of its bid. Id.

While Parmatic contends that it would be in the best interest of the Government to accept its low bid, our Office has held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement by considering a late bid. Northwest Instrument, B-200873, November 18, 1980, 80-2 CPD 373. We conclude that SPCC properly rejected Parmatic's bid.)

Parmatic also protests that the solicitation's cover sheet erroneously indicated that the solicitation was a negotiated procurement. Assuming, arguendo, that Parmatic thought the solicitation was an RFP, its "telegraphic proposal" was nevertheless late and could not be considered. See Keco Industries, Inc., B-204869, April 7, 1982, 82-1 CPD 324; Infinity Corporation, B-202508.3, July 17, 1981, 81-2 CPD 45. Moreover, this discrepancy was apparent on the face of the solicitation. This ground of protest therefore should have been filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1982). See International Business Investments, Inc., B-204429, January 6, 1982, 82-1 CPD 16.

The protest is denied.

for   
Comptroller General  
of the United States