



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Happy Penguin--Request for Reconsideration
File: B-225715.2
Date: March 20, 1987

DIGEST

1. Federal Acquisition Regulation, 48 C.F.R. § 14.304-1(d) (1986), which provides for consideration of a late modification of an otherwise successful bid which makes its terms more favorable to the government, does not apply where the bid only becomes low if the modification is considered.
2. The maintenance of confidence in the government procurement system is of greater importance than the possible monetary advantage to be gained by considering a late bid modification in a particular procurement.

DECISION

Happy Penguin requests reconsideration our decision in Happy Penguin, B-225715, Feb. 20, 1987, 87-1 CPD _____. In that decision, we dismissed its protest against the rejection of its telegraphic bid modification as late under solicitation No. DAAA09-86-B-0281, issued by the U.S. Army Armament, Munitions and Chemical Command, Rock Island, Illinois. We affirm the prior decision.

As explained in our prior decision, the Army rejected Happy Penguin's bid modification because it was not received by the time set for bid opening, 10 a.m. on January 20, 1987. Happy Penguin stated in its protest that it sent the modification by Western Union TWX machine on the day of bid opening and that the message arrived at the Command's TWX machine at 9:48 a.m. The agency has recently advised us that although the communications center at the Command received Happy Penguin's TWX at 9:54 a.m., the Procurement Directorate did not receive it until 10:49 a.m.

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The standard solicitation clause and pertinent procurement regulation, Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1(a) (1986), permits consideration of a late telegraphic bid modification if the lateness is due to government mishandling after receipt at the government installation.

We dismissed the protest because it appeared that Happy Penguin's failure to allow a reasonable time for the modification to be delivered from the point of receipt to the designated location for receipt of bids, and not government mishandling, was the paramount cause for late receipt. See Monroe Wire & Cable Co., B-221896, May 28, 1986, 86-1 CPD ¶ 494 (transmission of modification 11 minutes before bid opening allows insufficient time for delivery to place designated for receipt of bids); cf., Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2 CPD ¶ 491.

In its request for reconsideration, Happy Penguin cites the FAR, 48 C.F.R. § 14.304-1(d), which provides that "a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted." Happy Penguin claims that consideration of the bid modification, thereby rendering the firm the low, responsive bidder, would have resulted in substantial savings for the government.

By its very terms, however, section 14.304-1(d) is limited to a modification of an "otherwise successful bid"; it does not apply where, as here, the bid only becomes low if the modification is considered. Cf. Space Age Engineering, Inc.--Reconsideration, B-205594.3, Sept. 24, 1982, 82-2 CPD ¶ 269 (bid as originally submitted must already be the low responsive bid); Gateway Van & Storage Co., B-198900, July 1, 1980, 80-2 CPD ¶ 4. Therefore, the FAR provision does not require a different result in this case. Moreover, with respect to the savings that would have accrued to the government by acceptance of Happy Penguin's bid, it is well-settled that the maintenance of confidence in the integrity of the government procurement system is of greater importance than the possible monetary advantage to be gained by considering a late modification in a particular procurement. Hargis Construction, Inc., B-221979, May 6, 1986, 86-1 CPD ¶ 438.

Accordingly, the prior decision is affirmed.

for *Seymour E. Evers*
Harry R. Van Cleve
General Counsel