

Gary



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Singleton Contracting Corp.
File: B-232760
Date: December 14, 1988

DIGEST

1. Telegraphic bid modification, recorded by the agency as having been received for the first time the day after bid opening, is properly rejected as late notwithstanding information from Western Union purporting to show that it was transmitted prior to bid opening; the only acceptable evidence to establish timely receipt is the government's time/date stamp or other evidence of receipt maintained at the government installation.
2. Protester's assertion that contracting official improperly refused to accept attempted telephone modification of its bid through Western Union is not sufficiently supported by record where protester presents confirming notice from Western Union that call was attempted, but there is no contemporaneous documentation that call was made or that contracting official refused to accept modification, and contracting official denies in affidavit that she received call from Western Union or that she ever instructed any employee to refuse telephone modification.

DECISION

Singleton Contracting Corp. protests the rejection of its telegraphic bid modification as late, and the award of a contract to F.H. Myers Construction Company, under invitation for bids (IFB) No. 00-88-B-90, issued by the Department of Agriculture (USDA) for the installation of wainscoting and bumper railings at its National Finance Center building in New Orleans.

We deny the protest.

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According to the IFB, bids were to be received by 3 p.m. on September 19, 1988. Although Singleton's initial bid was timely received, the firm subsequently sought to modify its bid by telex, via Western Union, on the morning of September 19. The modification would have made Singleton's the low bid. According to the agency, however, the modification was not received until 12:18 p.m., on September 20, approximately 21 hours after bids had been opened. Consequently, it was rejected as late and award was made to Myers as the low responsible bidder. Singleton argues that its telex was timely received, as evidenced by documentation furnished the firm by Western Union.

Generally, a telegraphic modification of a bid may be accepted only under the exact circumstances set out in a solicitation. Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2 CPD ¶ 491. Here, the IFB incorporated the "Late Submissions, Modifications, and Withdrawals of Bids" clause of the Federal Acquisition Regulation (FAR) § 52.214-7. This clause permits consideration of a telegraphic modification received at the office designated in the solicitation after bid opening if (1) it is received before award is made, and (2) the government determines that late receipt was due solely to mishandling after receipt at the installation. As provided in the FAR and in our decisions, the only acceptable evidence of receipt at the government installation is the time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by the installation. Boniface Tool & Die, Inc., B-226550, July 15, 1987, 87-2 CPD ¶ 47.

Here, the proof offered by Singleton of the timely receipt of its bid modification is information from Western Union which indicates the time and date of that firm's attempted transmission of Singleton's bid price reduction. We have specifically held that such information from Western Union is unacceptable to establish the time of receipt of a telegraphic modification. Id.; see also, Kings Point Industries, B-228150, Nov. 10, 1987, 87-2 CPD ¶ 474. This is not evidence maintained by the installation, and thus does not suffice to establish timely receipt. For its part, USDA reports that the earliest record of its receipt of the telexed bid modification is 12:18 p.m., on September 20, at its telegraphic message room. The agency further states that a review of the message room's "hard disk," which permanently records all telegraphic messages received by USDA, indicated that none had been received from Singleton

on September 19. Consequently, there is no evidence of receipt at the government installation to support Singleton's contention that its bid modification was timely received.

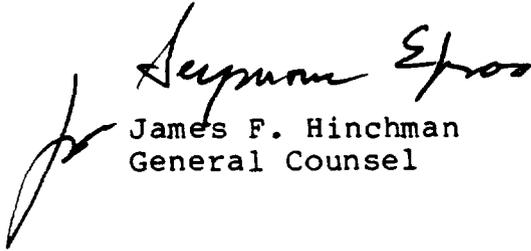
In the alternative, the protester offers information from Western Union that it attempted delivery of Singleton's message via telephone on the morning of September 19, but was directed by an agency contracting official to forward the message to the agency's telex number. According to Singleton, since it was improper for the agency to refuse the telephonic modification (which is provided for by FAR § 14.303(a)), the agency's doing so constituted government mishandling of the bid modification that warrants consideration of the subsequent telex.

In support of this argument, the protester has submitted a mailgram from Western Union to Singleton advising that Singleton's telegram of September 19, 9:36 a.m., "was attempted for delivery via telephone and refused by addressee [office designated for receipt of bids]. Agent was instructed per Brenda Whittingham to forward to telex number 89491. . . ." (Brenda Whittingham is a contract specialist and is named in the solicitation as the person authorized to receive bids.) Ms. Whittingham has stated in a sworn affidavit, however, that she neither received a telephone call from Western Union on September 19, nor instructed the only other person in her office that day, her secretary, to refuse any such call. She also states that she did not even know the agency's telex number, and therefore could not have provided it to Western Union even had she received the call. Given these considerations and the absence in the record of any conclusive, contemporaneous evidence of an attempted telephonic communication, we find that Singleton has failed to demonstrate that a telephonic bid modification was attempted by Western Union and refused by any authorized agency official.^{1/} The protester bears

^{1/} We offered Singleton the opportunity for a fact-finding conference on the issue of whether USDA officials refused any attempted telephonic modification of the firm's bid, but after Singleton determined that it was unable to obtain a knowledgeable witness from Western Union who could testify on the issue, Singleton declined.

the responsibility for its agent's failure to make a timely and complete transmission of a bid modification. See Hargis Construction, Inc., B-221979, May 6, 1986, 86-1 CPD ¶ 438.

The protest is denied.

James F. Hinchman
General Counsel