



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: T & A Painting, Inc.

File: B-233500.2

Date: April 11, 1989

DIGEST

Protest of consideration of a misplaced bid is denied where evidence in the record indicates that bid was received at government installation prior to bid opening, it was in the agency's possession until it was found and it was discovered prior to award.

DECISION

T & A Painting, Inc. protests the award of a contract to Bob's Painting and Decorating Company under invitation for bids (IFB) No. DAKF01-88-B-0044 issued by the Department of the Army for exterior painting of housing and administrative buildings at the Presidio, San Francisco, and its subposts. T & A argues that the bid from Bob's Painting was late and should not be considered for award.

We deny the protest.

The IFB set bid opening for November 3, 1988, at 2 p.m. Six bids were opened, with Color Chart, Inc., the apparent low bidder. After the rejection of Color Chart's bid as nonresponsive, T & A, as the second low bidder, was in line for award. A bid from Bob's Painting was not among those opened. On November 28, T & A was notified by the Army that a bid had been received from Bob's Painting, prior to the November 3 bid opening date and had been lost due to agency mishandling. The agency proposes to make award to Bob's Painting as it had become the lowest responsive, responsible bidder.

According to the Army, the bid from Bob's Painting was received at the installation's contracting office on November 1. The agency's time/date stamp machine stamped on the bid bond accompanying the bid the date of receipt as "October 32" at 8:48 a.m. The agency explains that this

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error occurred because the time/date stamp machine had not been adjusted for the change in month and that all documents stamped that day bore the same October 32 date. The Army further explains that the individual who received the mail that morning was a soldier temporarily assigned to the contracting directorate. The soldier apparently opened the bid without recognizing it as such, discarded the envelope, and stamped the bid bond. Subsequent to the soldier's processing of the bid with the other mail it was lost. On November 17, after bids were opened but before award of the contract, the bid was discovered and the agency wishes to make award based on the bid.

T & A argues that in the absence of the bid envelope the Army cannot prove that the bid was received timely or that it was even, in fact, mailed (as opposed to hand delivered) to the installation. T & A also questions the authenticity of the time/date stamp that appears on the bid bond itself, postulating that the time/date machine could have been tampered with. T & A argues further that there is no proof that any mishandling was solely the fault of the government and contends that the presumption must be that the bid was mishandled because the envelope did not indicate on its face that it contained a bid.

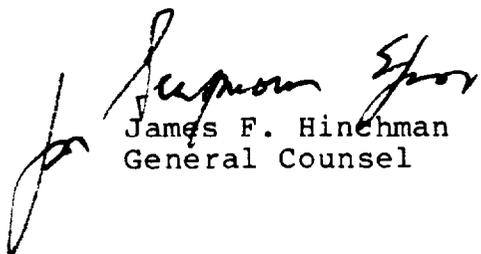
The protester's argument that it is not possible to tell whether the bid was mailed, as opposed to hand delivered, is irrelevant. A misplaced bid, whether mailed or hand delivered may be considered for award if (1) the bid was received at the installation prior to bid opening (2) its remedied under the agency's control until discovered and (3) was discovered prior to award. Leland and Melvin Hopp, Partners, B-211128, Feb. 15, 1984, 84-1 CPD ¶ 204. In making a determination of whether such a bid may be considered, the time of receipt at the installation must be established. See Adskon, Inc., B-224209, Dec. 10, 1986, 86-2 CPD ¶ 666. Id.

We think the Army properly considered the bid submitted by Bob's Painting. Here, the documentary evidence maintained by the installation to establish the time of receipt is the time/date stamp which appears on the bid bond itself. In view of the agency's reasonable explanation of the "October 32" date on the bid bond we think that the stamp on the bid bond itself indicates that the bid was received before the November 3 bid opening. The agency states that its own mishandling was the sole cause for the bid not being at the bid opening location on time. Contrary to the T & A's unsupported allegations, there is no evidence that the time/date stamp machine was tampered with nor is there

any evidence that the envelope was not properly identified as a bid thereby causing the mishandling.

Nevertheless, we are concerned that the opened bid was "lost" at the installation for over 2 weeks. Since, however, there is no evidence that the bid was not at the installation during that time or that the bid itself had been altered, we think that consideration of the bid for award is consistent with the integrity of the sealed bidding system. See Veterans Administration--Request for Advance Decision, B-212800, Oct. 25, 1983, 83-2 CPD ¶ 498.

The protest is denied.


James F. Hinchman
General Counsel