

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

60047

FILE: B-184388

DATE: October 10, 1975

MATTER OF: Interstate Contractors

97829

**DIGEST:**

1. Telegraphic bid modification, received after scheduled bid opening, was properly rejected since bidder did not meet specific conditions set forth in IFB concerning consideration of late bid modifications.
2. Where low bidder refuses to verify bid is free from error or, in alternative, to file claim of error before award, agency may properly award contract to second low bidder.

Interstate Contractors (Interstate) has protested against the award of a contract under invitation for bids (IFB) N62474-75-C-2353 issued by the OICC Naval Communication Station (OICC), Stockton, California, for installation of lighting fixtures. Bids were opened at 1 p.m. on June 23, 1975, as scheduled. Eight bids were received as follows:

Interstate Contractors	\$28,928.00
Tresch Electric Company	\$32,900.00
Grames Electric Company	\$32,994.00
Bockmon & Womble Electric Co.	\$39,900.00
Dubois Electric Company	\$40,112.00
Risso Electric Incorporated	\$40,787.30
Ferrero Electric Incorporated	\$41,852.00
Overhead Electric Company	\$62,992.00

Western Union had earlier telephoned a telegraphic modification by Interstate increasing its bid by \$3,350 to \$32,278. Under the terms of the solicitation any modification of bid was required to be in written form. The telegram itself was not received until 4:25 p.m. on June 24, 1975. Accordingly, on June 25, 1975, OICC advised

Interstate that its telegraphic modification was late and could not be considered under paragraph 7-2002.2 of the Armed Services Procurement Regulation (ASPR) (1974 ed.). Further, OICC advised Interstate its bid in the amount of \$28,928 was the low apparent bid and that it had the option of (1) accepting award based on its original bid price, or (2) withdrawing or requesting a correction of bid prior to award on the basis of error in bid. On June 27, 1975, OICC advised Interstate that in order to receive award on the basis of its bid as submitted, it would have to waive any right to file a claim after award on the basis of a bid error. Since the funds supporting this procurement expired June 30, 1975, award was made to Tresch Electric Company in the absence of verification of its bid or a claim of error by Interstate. In this regard, it is reported that Interstate was advised that award had to be made by the close of business on June 30.

Interstate contends that it should have received the award at the price submitted and to require it to waive any later claim of error as a condition of its verification was unfair.

OICC's request for verification of Interstate's bid was in accordance with paragraph 2-406 of the Armed Services Procurement Regulation (1974 ed.), and its request for waiver or, in the alternative, to produce evidence of error before award was in accordance with the policy of the Naval Facilities Engineering Command (NAVFAC) not to award a contract with a reserved claim of error in bid. The rationale for such policy, as stated in the agency report, has two bases:


"(1) NAVFAC will not permit use of the bid-correction procedure to circumvent the late modification provision of the ASPR; (2) NAVFAC will not knowingly award a contract with a claim built in or award a 'contract' to a firm on a bid known to be erroneous."

In the absence of any response by Interstate either verifying its bid and waiving a claim of error or presenting evidence of error prior to award, we feel the decision by NAVFAC not to award the contract to Interstate to be a reasonable exercise of agency discretion.

Interstate also contends that its telegraphic modification was late due to incorrect statements by Government personnel at OICC as to the receipt of the telegram. Interstate alleges that sufficient time remained to make a hand delivery of the modification so as to be received prior to the 1 p.m. bid opening. In reliance on information obtained from OICC personnel which erroneously acknowledged receipt of its modification, Interstate did not make further efforts to deliver a written modification.

While the administrative report responsive to the protest does little to refute these allegations, the instructions to bidders on the reverse side of Standard Form 22 provided that any bid or modification thereof received after the exact time specified for receipt will not be considered unless it is received before award is made and the late receipt was due solely to mishandling by the Government after receipt at the Government installation. Since the record does reflect that Interstate's modification was not received at the Government installation until 1-day after the scheduled bid opening, the above provision could not apply. Additionally, the instructions stated that the only acceptable evidence to establish 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. The date recorded by the Naval installation is June 24, 1975, 1625 hours (4:25 p.m.). Therefore, the modification was late and could not have been properly considered under the "Late Bid" provisions of the IFB. Additionally, it is the bidder's responsibility to assure that its bid arrives in time for a scheduled bid opening. 49 Comp. Gen. 191, 195 (1969). Late receipt of a bid will result in its rejection unless the specific conditions set forth in the IFB are met. 49 Comp. Gen. 733, 735 (1970); 46 Comp. Gen. 42, 45 (1966).

For the above stated reasons, the protest is denied.

  
Deputy Comptroller General  
of the United States