

DECISION



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

FILE: B-186487

DATE: August 31, 1976

MATTER OF: Dima Contracting Corporation

DIGEST:

Where subsequent to bid opening it is discovered that bid was timely received at agency but was not opened because of reference on envelope to another IFB, fact that agency returned unopened bid to bidder operates to prevent bid, later resubmitted, from being considered for award.

This protest arose from the Navy's determination not to consider for award the bid of Dima Contracting Corporation (Dima) under invitation for bids (IFB) No. N62472-76-C-1914 (hereafter-1914), issued by the Northern Division, Naval Facilities Engineering Command (Navy).

IFB-1914 called for bids for painting portal cranes at the Portsmouth Naval Shipyard, Portsmouth, New Hampshire. Nine bids were received at the Shipyard on April 26, 1976 at 2:00 p.m., the designated bid opening time. On that date, after the conclusion of bid opening, the Shipyard received a telephone call from Dima requesting information as to Dima's status under the subject IFB. No bid from Dima had been opened. However, the bid box did contain a sealed bid from Dima which had been received at the Shipyard April 23, 1976. The face of Dima's envelope referenced another solicitation, No. 62472-77-C-1917 (hereafter-1917), Specification No. 04-76-1917, and an opening date of April 26, 1976, 2:00 p.m.

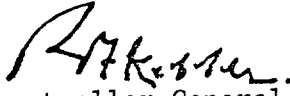
The solicitation and specification numbers on Dima's bid envelope matched a solicitation issued by the Navy and scheduled for bid opening at the Portsmouth, New Hampshire Naval Shipyard on April 28, 1976. Thereafter, by letter dated May 3, 1976, the Navy returned to Dima, unopened, the sealed bid and informed Dima that this bid could not be considered for award under IFB-1914 because of the failure to display the correct number on

the face of the sealed envelope. On May 14, 1976, the Shipyard received, apparently still unopened, Dima's bid and a letter stating that the bid was being returned for consideration under IFB-1914.

We are of the opinion that in all likelihood the error was bona fide. The fact that the bid envelope shows a conflict between the solicitation number and date of bid opening indicates that an error was made. On the other hand, we also must recognize the possibility that the bidder could have mislabeled its bid envelope in order to exercise control over the bid after bid opening or by requesting its withdrawal. Further, there is apparently no authority for having opened the bid envelope because of the discrepancy between the solicitation number and the bid opening date since ASPR permits premature opening only of unidentified bids (for purposes of identification). ASPR § 2-401(b). Under the circumstances we cannot say that the Navy acted arbitrarily when it returned the bid unopened to the bidder.

We are left, therefore, with the issue of the effect of the Navy's return of Dima's bid. We cannot agree with Dima's contention that the bid is now properly for consideration, notwithstanding Dima's assertion that the bid as resubmitted was unopened. The return of a bid to the sender after bid opening operates to prevent further consideration under any circumstances. Kirschner Associates, 55 Comp. Gen. 36, 37 (1975), 75-2 CPD 3; Commercial Envelope Manufacturing Co., Inc., B-183010, July 17, 1975; 75-2 CPD 44.

Accordingly, the bid of Dima as resubmitted cannot now be considered for award.


Acting Comptroller General
of the United States