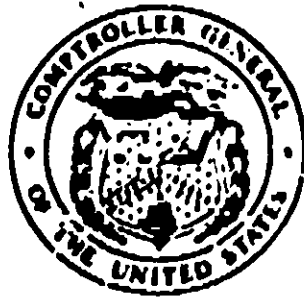


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DECISION



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

FILE: B-189739

DATE: October 25, 1977

MATTER OF: Instrumentation and Mechanical Systems, Inc.

DIGEST:

Late bid sent by regular mail may not be considered because there is no documentary evidence available to indicate when bid initially was received at Government installation and in the absence thereof it cannot be determined whether bid's late receipt in bid opening office was due to Government mishandling.

Instrumentation and Mechanical Systems, Inc. (IMS) protests the rejection of its bid as late by the Corps of Engineers, Los Angeles District (Corps). IMS maintains that its bid should have been considered because late receipt was due to mishandling at the installation. IMS contends that the rejection of its bid was arbitrary and capricious thereby entitling the firm to bid preparation costs.

Invitation for bids (IFB) DACW09-77-B-0016 was issued on April 14, 1977, with a scheduled bid opening time of 1:00 p.m. on May 11, 1977. The IMS envelope which contained the firm's bid was discovered at approximately 1:15 p.m. in the incoming mail basket in the Procurement and Supply Division, the office responsible for receipt of bids. The letter had been sent by ordinary mail and had been opened prior to its receipt by the Procurement and Supply Division.

The agency report states that the Corps' mail is regularly picked up at the Post Office at approximately 10:00 a.m. and 12:00 noon. The Post Office is located on the first floor of the Federal building and the Corps' offices are on the sixth floor. An affidavit of the mail clerk who picked up the mail at 12 noon indicates that:

"* * * My standard practice is that when I come upon an envelope marked as a 'Bid,' I immediately date and time stamp it and personally deliver it to the Bid Opening Officer in the Procurement and Supply Division Office, some 250 feet and 45 seconds down the corridor. All other mail is sorted, but not date or time stamped.

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"On 11 May 1977, I made my regular pick up at the Post Office at 12:00 noon and returned to the mail room by 12:05 p. m. Immediately thereafter I sorted the mail but did not recognize any envelope as a 'Bid.' Thus, I did not date or time stamp any mail * * * included in the 12:00 noon pick up. I was finished sorting this mail before 12:30 p. m., at which time another clerk began delivering the mail to all Corps of Engineers' offices on his regular delivery route."

The IMS bid envelope contained the identification "Bid Under Reference No. DACW09-77-B-0016" as required by the IFB. The Corps concedes that if the bid was received and handled properly in the mailroom, the bid would have been hand delivered to the Bid Opening Officer prior to the 1:00 p. m. bid opening. However, the bid was discovered with other incoming mail, at 1:15 p. m.

Initially the Corps' Los Angeles District proposed to accept the IMS bid. RMP Marine Services, Inc. (RMP), the apparent low bidder, then protested any award to IMS. In July 1977, the Office of the Chief of Engineers disagreed with the District office and concluded that because the envelope containing IMS' bid was not time/date stamped and no other documentary evidence is available to establish time of receipt at the Government installation "it is impossible to determine whether the bid could have been timely delivered under normal mailroom procedures * * * and whether Government mishandling was the sole reason for its late arrival at the bid opening." The Corps rejected IMS' bid and accepted RMP's bid. After learning of this decision, IMS protested to our Office.

Armed Services Procurement Regulation (ASPR) § 7-2002.2 (1976 ed.), which delineates the conditions for consideration of late bids, was incorporated into clause 7 of the "Instructions to Bidders" of the IFB. The Late Bid Clause provides:

"7. LATE BIDS. MODIFICATION OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

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(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of bids (e. g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

* * * * *

(c) The only acceptable evidence to establish

* * * * *

(ii) 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 questions presented are whether IMS' bid was received on time and, if so, whether its late discovery was due solely to Government mishandling. Paragraph (a)(ii) of the Late Bid Clause provides that a bid may be considered if it is determined that the late receipt was due solely to Government mishandling after receipt at the installation.

Before we can consider the question of mishandling, the time of receipt at the installation must be established. B. E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145. Such receipt must have occurred prior to bid opening. Astro Development Laboratories, Inc., B-181021, July 17, 1974, 74-2 CPD 36. The clause provides in paragraph c(ii) and we have consistently held that the only acceptable evidence of receipt at the Government installation is the time/date stamp on the wrapper or other documentary evidence of receipt maintained at the installation. See e.g., B. E. Wilson Contracting Corp., id; Lambert Construction Company, B-181794, August 29, 1974, 74-2 CPD 131. "Other documentary evidence" must be contemporaneous evidence rather than after the fact affidavits. B. E. Wilson Contracting Corp., id.

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There is no documentary evidence contemporaneous with the bid opening to establish that the bid was first received at the installation prior to bid opening. The evidence presented in this case, (consisting of after the fact affidavits and inferences drawn therefrom) while suggesting the sequence of events, does not meet the strict evidentiary requirements of ASPR or our Office to establish timely receipt at the installation.

In the circumstances, we must conclude that the bid was properly rejected and, therefore, deny the protest and the claim for bid preparation costs.

Parenthetically, we note that the protester contends that the bid was mailed six days prior to bid opening. This problem could have been avoided if, in the circumstances, the protester had mailed its bid by either certified or registered mail. See ZB Precision Products, Inc., B-187985, May 6, 1977 77-1 CPD 316.


For The Comptroller General
of the United States