



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

31246

B-178798

August 8, 1973

Buffalo Forge Company
3900 Wisconsin Avenue, NW.
Washington, D.C. 20016

Attention: Mr. L. G. Humphrey

Gentlemen:

By letter dated July 9, 1973, and prior correspondence, you protest the decision of the Navy Purchasing Office (NAVPURO), Washington, D.C. to reject as late your bid submitted under invitation for bids (IFB) No. N00600-73-B-0282.

The subject IFB was issued by the Navy on April 13, 1973. The solicitation provided that bids would be received in the issuing office until 11:00 a.m., e.s.t., May 7, 1973. Your bid, which was sent Special Delivery, Certified, was not received until 1:42 p.m., on May 7.

Armed Services Procurement Regulation (ASPR) 2-303, which governs consideration of late bids, provides in regard to late bids sent by certified mail:

203.3 Mailed Bids

(a) * * * A late mailed bid received before award may be considered for award only if:

- (1) it was sent by * * * certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, and it is determined that the lateness was due solely to a delay in the mails * * * for which the bidder was not responsible; * * *

* * * * *

(c) Certified Mail. The time of mailing of a late bid, mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be deemed to be the last minute

[A: A. B. R.]

719260

09172

of the date shown in the postmark on such receipt, except where (i) the Receipt for Certified Mail identifies the post office station of mailing and the bidder furnishes evidence from such station that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (ii) an entry in ink on the Receipt for Certified Mail, showing the time of mailing and the initials of the postal employee receiving the item and making the entry, is appropriately verified in writing by the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late. (Underscoring supplied.)

In accordance with the requirement of these provisions, the Navy notified you in a letter dated May 7, 1973, that in order for your bid to be considered you should furnish by May 17 the original post-marked receipt for certified mail.

On May 9, 1973, Mr. Neidermeyer of your office advised the contracting officer by telephone that the receipt for certified mail did not contain a postmark. At the time of this conversation Mr. Neidermeyer, who was at the Friendship Station Post Office, requested that the contracting officer speak with an unidentified postal employee, which employee thereupon informed the contracting officer that the receipt could be postmarked at that time to indicate a mailing date of May 4 if the contracting officer would certify that the envelope was postmarked May 4, 1973. The contracting officer responded that she thought it improper to postmark the receipt at this time. The contracting officer also reports that she examined the envelope carefully and informed the postal employee that the postmark on the front of the envelope was illegible and that there was no other postmark from the post office on the envelope. Subsequently, Captain Williams, the contracting officer's superior, also examined the bid envelope and informed Mr. Neidermeyer that the postmarked date on the envelope was illegible. Mr. Neidermeyer then requested a copy of the envelope. The contracting officer made a copy of the front of the envelope and forwarded it to your firm. She states, however, that no copy was made of the back of the envelope because there was nothing on the back but the words "Special Delivery" stamped in several places.

The Navy returned your bid to you by letter of May 24, 1973. ASFR 2.303.7 directs that late bids be returned unopened after award and since award had not yet been made, your bid was returned prematurely.

B-178798

You state that when the bid was returned to you, you examined the back of the envelope and noticed that it had been postmarked twice. The postmarks indicated that the envelope had been received in the Special Delivery Section, Washington, D.C. at 9:00 p.m., May 4, 1973. Based upon this evidence, you state that Mr. Feldermeier returned to the Friendship Station Post Office where the postal employee then postmarked the Receipt for Certified Mail to indicate a mailing date of May 4. You then presented this receipt to the contracting officer as evidence that the lateness of your bid was due solely to delay in the mails.

There is some controversy between your firm and the contracting officer concerning whether the postmarks on the back of the envelope were, in fact, there at the time the bid was originally received by the Navy on May 7. There is also disagreement about whether it was proper for the postal employee to backdate the Receipt for Certified Mail based on the postmark on the bid envelope.

In any event, we do not think that a bidder satisfies the requirement of ASPR 2-303.3 by submitting a Receipt for Certified Mail which was postmarked at a time other than the time of mailing. The regulation requires that a late bid be mailed by registered mail or certified mail for which an official postmarked, original Receipt for Certified Mail has been obtained. Since ASPR does not permit acceptance of a postmark as sufficient evidence of when the bid was mailed, we do not think it is appropriate to accept a Receipt for Certified Mail which, subsequent to the date of mailing, was postmarked on the basis of the postmark appearing on the envelope. As we stated in B-154775, August 10, 1974, " * * * postmarks on certified mail envelopes are entitled to no more consideration under ASPR than are postmarks on ordinary mail."

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Doebling

For the

Comptroller General
of the United States