

DECISION



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

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97199

FILE: B-183276

DATE: June 12, 1975

MATTER OF: Perma-Steel, Inc.

DIGEST:

1. Bid received by procuring activity within three hours after bid opening and before award is not late, since bid was mailed on fifth day prior to date specified for receipt of bids and under such circumstances, ASPR § 7-2002.2 (1974 ed.) authorizes consideration of bid as timely received.
2. Protest against cancellation of prior solicitation is untimely since protest was received in this Office more than five days after date on which protester knew basis for protest.

Perma-Steel, Inc. (PSI) protests the award of a contract to Lozier Store Fixtures, Inc. (Lozier) under Invitation for Bids (IFB) No. N00250-75-B-0112 (No. 112) issued by the Navy Resale Systems Office, Brooklyn, New York for general grocery shelving. This protest raises two distinct issues. The first concerns the propriety of accepting Lozier's low bid which was received by the Government approximately three hours after bid opening. The second issue raised by PSI concerns the propriety of the cancellation of a predecessor solicitation, IFB N00250-75-B-0068 (No. 68), for similar items.

On January 29, 1975, IFB No. 112 was issued with a bid opening date of February 10, 1975. Subsequent amendments extended the bid opening to 10:00 a.m., February 18. Four bidders attended the bid opening at which three responsive bids were revealed. PSI was the apparent low bidder at \$197,741.80. Lozier's representative present at the bid opening stated that his firm's bid had been mailed on February 13, 1975, from its headquarters in Omaha, Nebraska. Lozier's bid was not among those received at bid opening.

However, Lozier's bid was received by the procuring activity at 1:00 p.m. on February 18. The bid envelope bore a postmark of February 13, 1975. The Navy reports that since Lozier's letter had been sent by certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids, it was considered to have been mailed in sufficient time to have been a

timely bid. Furthermore, the Navy reasoned that since no award had been made, Lozier's bid could be opened by the bid opening officials and added to the Abstract of Bids. Lozier bid \$187,996.40, thereby supplanting PSI as the apparent low responsive bidder.

PSI first argues that the existence of an "irregularity" is suggested by the receipt of Lozier's low bid after bid opening and by the agency's opening of that bid out of the presence of the other bidders.

Armed Services Procurement Regulation (ASPR) § 7-2002.2 (1974 ed.) provides for the inclusion in Standard Form 33A, clause 8, the following provision:

"(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 * * *

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the 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);

* * * * *

"(c) The only acceptable evidence to establish:

"(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. (The term 'postmark' means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service.)"

This provision was included in the subject invitation.

The envelope in which Lozier's bid was sent by certified mail is clearly postmarked February 13, 1975. Moreover, the original Postal Service certified mail receipt confirms the February 13 mailing date. Consequently, since Lozier's letter was sent on the fifth day, February 13, prior to the date specified for receipt of bids, February 18, Lozier's bid was properly considered for award. The record reflects no "irregularity" in the handling of Lozier's bid, as alleged by the protester.

The second issue raised by PSI relates to the propriety of the cancellation of IFB No. 68. The record shows that on January 9, 1975, PSI learned that the IFB was to be canceled and the requirement readvertised because the Government's needs had changed and some of the items upon which bids had been received were no longer needed. By letter of January 9, 1975, PSI stated to the Navy buyer:

"We feel that if there are items which will not be purchased, the bidder should know about it. Consequently the schedule should reflect this and perhaps be rewritten and rebid."


The Navy's cancellation of IFB No. 68 and later issuance of IFB No. 112 were consistent with the views initially expressed by PSI. PSI was advised of these actions by letters of January 23 and 30, 1975. PSI later became of the opinion that award should have been made to it under IFB No. 68. However, its protest against the cancellation of that solicitation was not received by our Office until February 24, 1975.

Our interim bid protest procedures then in effect provided in pertinent part that:

"* * * bid protests shall be filed not later than 5 days after the basis for protest is known or should have been known, whichever is earlier. * * *"

4 C.F.R. § 20.2(a) (1974). In view of the fact that we received PSI's protest about four weeks after the notice of cancellation was issued and certainly more than 5 days after PSI knew the basis for its protest, we cannot consider the propriety of the cancellation on its merits.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States