

DOCUMENT RESUME

02394 - [A1592566]

[Rejection of Telegraphic Proposal Modification as Untimely].
B-188325. May 31, 1977. 4 pp.

Decision re: Micor-Dynamics, Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Microwave Associates; Department of the
Air Force: Robins AFB, GA.

Authority: 54 Comp. Gen. 999. 55 Comp. Gen. 1340. 55 Comp. Gen.
4. 55 Comp. Gen. 220. B-186766 (1976). B-186848 (1976).
B-181794 (1974).

Company protested rejection of its amended proposal as
being late. Its telegraphic proposal modification was
time-stamped at Air Force base 27 minutes after designated time
for receipt of proposals. Transmission time of TX message was
prior to deadline, but the only acceptable evidence of timely
receipt, where no evidence existed regarding time-stamp or
receiving equipment malfunction, was agency time/date stamp.
Protest was denied. (Author/DJM)

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DECISION



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

FILE: B-188325

DATE: May 31, 1977

MATTER OF: Micro-Dynamics, Inc.

DIGEST:

Telegraphic proposal modification Government time-stamped 27 minutes after time for receipt of proposals designated in RFP was properly rejected as late notwithstanding time on TWX message and on Western Union bill indicating transmission before the deadline, since only acceptable evidence to establish timely receipt where no evidence exists regarding time-date stamp or receiving equipment malfunction is time-date stamp on message or other documentary evidence of receipt maintained by installation.

Micro-Dynamics, Inc. (Micro), protests the rejection of its amended proposal as late and the award of a contract to Microwave Associates (Associates) for 43 Limiter Waveguides under Request for Proposals F09603-77-R-0275 issued by the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia.

On the December 7, 1976, closing date proposals were received from Micro offering a unit price of \$485 and from Associates offering a unit price of \$269. Since the RFP provided that Micro was the only qualified source a technical review was required to determine whether Associates could become a qualified source for the item. After it was determined that Associates was a qualified source negotiations were conducted with both offerors. On December 30 letters were sent to both offerors affording them the opportunity to submit best and final offers no later than 4 p.m. on January 14, 1977. These letters referenced the "Late Proposals" provision incorporated in the RFP which provides in pertinent part:

"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS AND
WITHDRAWALS OF PROPOSALS (1974 APR)

* * * * *

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"(c) A modification resulting from the Contracting Officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

"(d) The only acceptable evidence to establish:

* * * * *

"(1) the time of receipt at the Government installation is the time/date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation."

According to Micro, at 3 p.m. on January 14 it sent a TWX message to Warner Robins lowering its unit price to \$260. However, that message, which on its face indicates that it was sent at 3 p.m. on January 14 received a time/date stamp at the Warner Robins TWX receiving office which indicates the message was received at 4:37 p.m. The agency determined that Micro's revised proposal was received after the 4 p.m. deadline for receipt of best and final offers and must be rejected. If Micro's offer had been timely it would have made that firm the low offeror.

The agency report provides the following description of the receipt of Micro's TWX:

"The TWX machine is physically located in Room C23 of the West Wing of Building 300 on Robins AFB. The supervisory Procurement Clerk (Data Transcribing) and several other Procurement Clerks are located in the same room with the TWX machine. The supervisory Procurement Clerk responsible for messages received on this TWX machine has signed a Statement, which is included in this file, attesting to their procedures for date/time stamping incoming messages. Messages can be received on the TWX machine Monday through Friday, with the exception of Government holidays, at all times during the day or night. The duty time for personnel in the TWX Room is 0800 - 1645

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hours. The machine is cleared at the beginning of each day of all messages that came in during off duty hours. After this first clearing of all messages on the machine, the standard procedure is to clear the TWX machine of messages received within each hour of the day, up to the end of duty time. Time permitting, the machine is cleared at various times during each hour, but as a minimum, it is cleared just prior to every hour on the hour. The machine is also cleared for the day just prior to 1645, the end of the tour of duty. All messages are dated and time stamped at the time of removal from the TWX machine. The supervisory Procurement Clerk responsible for receipt of incoming messages has held this position for over a year (as reflected in the Statement included in this file), is very knowledgeable of the importance of the accurate date and time stamp, and was on duty on 14 Jan 77. To the best of her recollection, nothing unusual happened to preclude accomplishing the regular office procedure of clearing the TWX machine by 4:00 PM of TWXs received within the preceding hour and date/time stamping these TWXs. Based on the foregoing, there is no reason to believe the TWX in question could have been received before 1600 hours."

Micro argues that since its bill from Western Union for the TWX services as well as the TWX message itself indicate that the message was transmitted at 3 p.m. the only way that it could have been stamped received at 4:37 was if it was mishandled at the Government installation, in which case Micro concludes its offer should be accepted in accordance with the terms of the "Late Proposal" clause.

In the past our Office has construed the "Late Bid" or "Late Proposal" clauses as authorizing the consideration of a late telegraphic bid or proposal which arrived at a Government installation in sufficient time prior to opening to have been timely delivered to the place designated in the solicitation. Hydro Fitting Manufacturing Company, 54 Comp. Gen. 999 (1975), 75-1 CPD 331. In such cases the time/date stamp on the message was used to establish timely receipt at the Government installation. However, in some cases we have recognized that Government mishandling in the process of the receipt of as opposed to after the receipt of a telegraphic bid or

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proposal may provide a basis for consideration of an otherwise late bid or proposal. Hydro Fitting Manufacturing Company, supra; I&E Construction Company, Incorporated, B-186766, August 9, 1976, 55 Comp. Gen. 1340, 76-2 CPD 139; Record Electric, Inc., B-186848, October 6, 1976, 55 Comp. Gen. 4, 76-2 CPD 315.

In the case at hand Micro contends that there has been mishandling in the receipt of its message. However, Micro is unable to provide any evidence of mishandling other than the time of transmission as indicated on the face of the TWX message and on its Western Union bill. We are unable to find any other evidence on the record which would tend to indicate that the difference between the message transmission time on the TWX and the time stamped on the message at the installation was due to Government mishandling. In this connection we do not believe that the agency's procedures for handling TWX messages as described in the report are unreasonable.

In cases such as this where the only issue presented is the relative accuracy of an agency's time/date stamp and the transmission time as indicated in a TWX message we have consistently held that under the terms of the "Late Bid" or "Late Proposal" clause the only cognizable evidence of timely receipt is the agency time/date stamp. See B. E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145; Lambert Construction Company, B-181794, August 29, 1974, 74-2 CPD 131.

Accordingly, since the protester has not provided any positive evidence indicating Government mishandling or some malfunction in the Government's time/date stamp or receiving equipment we must conclude that Micro's proposal was late and properly rejected.

The protest is denied.


Deputy Comptroller General
of the United States