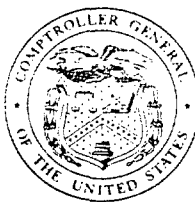


DECISION

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

12125

FILE: B-196081

DATE: November 27, 1979

MATTER OF: Building Maintenance Corporation

*Protest Alleging Awardee Did Not Timely Acknowledge IFB
Amendment*

DIGEST:

Bid modification and acknowledgment of amendment to solicitation was not late where it arrived by mail at Government office designated in solicitation for receipt of bids prior to bid opening and was mistakenly included with file of ordinary mail which was not distributed until after bid opening; late bid clause has no application to case.

Building Maintenance Corporation (BMC) protests the proposed award of a contract for janitorial services to Steamco Carpet Cleaning Company (Steamco) under invitation for bids (IFB) No. DOT-CG8-8139, issued by the United States Coast Guard. As its basis for protest, BMC alleges that Steamco did not timely acknowledge an amendment to the IFB. For the reasons stated below, the protest is denied.

On July 31, 1979, the Coast Guard issued Amendment No. 1 to the IFB which substantially increased the scope of the work solicited. The Coast Guard received four bids which it opened at 2:00 p.m. on August 30, 1979. The low bid was considered nonresponsive because the bidder failed to acknowledge the amendment. The next low bid, from Steamco, was recommended for award. BMC was the third low bidder.

BMC asserts that Steamco's bid cannot be considered for award because its acknowledgment of amendment No. 1 was not in the bid room by the time set for receipt of bids. BMC also claims that the late Steamco acknowledgment was not sent by certified or registered mail at least 5 days before bid opening

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as required by Federal Procurement Regulations (FPR) § 1-2.303 (1964 ed.). Thus, BMC claims that it is entitled to the award. We note here that Steamco's original bid was timely received and that its acknowledgment to amendment No. 1 also contained a modification to its original bid price. In both instances Steamco was lower than BMC. The agency's recommendation for award is based on Steamco's bid as modified.

The Coast Guard admits that Steamco's acknowledgment of the amendment was not opened at the time of bid opening. However, the Coast Guard states that it received Steamco's acknowledgment in the bid opening/issuing office at 11:47 a.m. or prior to bid opening, as evidenced by the time stamp on the face of the acknowledgment. The time-date stamp is located in the bid opening office. According to the agency, the acknowledgment was then mistakenly included in the file of morning mail which was not distributed until after bid opening. On this basis, the Coast Guard concluded that Steamco's bid would be considered since the delay in opening of the acknowledgment to amendment No. 1 was due solely to mishandling by the Government after receipt.

A late bid is one which is received at the office designated in the IFB after the exact time set for bid opening. FPR 1-2.303, supra. Here the office so designated was "Room 1210, Hale Boggs Federal Building," the exact location of the "bid opening/issuing office." Clearly, the documentary evidence (time-date stamp) conclusively establishes that the acknowledgment/bid modification was received at the proper location prior to bid opening and that it was not opened at the regular time only because it was misplaced by the Government. Under this circumstance Steamco's modified bid was properly considered. See Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351. Since we have concluded that the acknowledgment/modification was not late, we need not consider the question of whether it was sent by certified or registered mail as that question only has application with respect to late bids or modifications.

The protest is denied.

Milton F. Aoulan

For The Comptroller General
of the United States