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DECISION



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

FILE: B-199404

DATE: November 28, 1980

MATTER OF: Optic-Electronic Corporation--
Request for Reconsideration

DIGEST:

1. Prior decision finding protest untimely is reversed where it was based upon incorrect date (furnished by protester) of notification of rejection of bid.
2. Bid sent by certified mail which arrived 2 days after bid opening was properly rejected as late where bid was not sent by fifth calendar day prior to bid opening as required by Late Bids clause.

Optic-Electronic Corporation (Optic) requests reconsideration of our decision in Optic-Electronic Corporation, B-199404, July 18, 1980, 80-2 CPD 48. In that decision we dismissed as untimely its protest of the prospective award of a contract under solicitation No. N00104-80-B-0771 issued by the Department of the Navy. Optic alleged that it was improperly disqualified from consideration for award because the Navy determined that Optic's bid was received late.

In our prior decision, we stated that under our Bid Protest Procedures protests must be filed (received) in our Office within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. Optic's telegram of protest dated June 27, 1980, was received in our Office on June 30, 1980. Optic's telegram stated that it had received notice of the Navy's action rejecting its bid on May 26, 1980. However, to satisfy our timeliness rule, the protest had to have been filed by June 9, 1980. We therefore determined that the protest was untimely.

The Navy has now confirmed that it notified Optic of the rejection of its bid on June 23, 1980. Optic's reference to May 26, 1980, as the date it received notification was in error. Thus, the protest filed on June 30, 1980, was timely. However, in further considering the

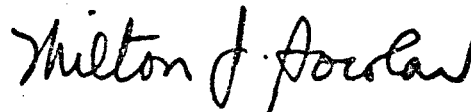
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protest, we have determined that the bid was properly rejected as late and the protest has no merit.

Under the "Late Bids, Modifications of Bids, or Withdrawal of Bids" clause incorporated into the solicitation, in order for a late bid to be considered for award it had to be sent by "registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of bids" or it must be determined that the late receipt was due solely to mishandling by the Government after timely receipt at the installation issuing the solicitation. There is no allegation that the Government installation mishandled the bid after timely delivery.

The envelope containing Optic's bid shows the bid was sent by certified mail on May 23, 1980. The bid was received on May 29, 1980, 2 days after bid opening on May 27, 1980. Thus, Optic's bid was mailed only 4 days prior to the date specified for receipt of bids. In order for the bid to have been considered, it had to have been mailed by May 22 or earlier, as provided in the clause referenced above. Under these circumstances, the late bid was properly rejected.

Therefore, the protest is denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, stylized "M" and "F".

For the Comptroller General
of the United States