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**DECISION**



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

FILE: B-204445

DATE: December 15, 1981

MATTER OF: CWC, Inc.

**DIGEST:**

1. Telegraphic bid modification, received after bid opening may properly be considered where contracting office received notice of arrival of telegraphic modification from Western Union office located on Government premises well in advance of bid opening and failure of contracting office to pick up the modification, as per policy, was paramount cause for its late receipt.
2. A strict and literal application of the late bid regulation should not be utilized to reject a late telegraphic bid modification where it is shown that Government mishandling is the paramount cause of the failure of the bid modification to be timely received at the Government installation.

CWC, Inc. (CWC) protests the consideration of a bid modification submitted by the W.E.C. Construction Co. (WEC) under invitation for bids (IFB) No. N62467-81-B-0010 issued by the Department of the Navy, Naval Facilities Engineering Command for the installation of waste disposal testing equipment at the Naval Air Station, Jacksonville, Florida. CWC contends that a telegraphic modification sent by WEC which reduced its bid below that of CWC was improperly considered by the contracting officer. We deny the protest.

The IFB scheduled bid opening for 2:00 p.m. July 28, 1981. At opening five bids were received with CWC's being the low bid. The bid as originally submitted by WEC was approximately twice as much as the low bid; however, as modified, WEC's bid would displace CWC's as low bid.

The IFB included a clause entitled "LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 MAR)," which contained the following:

"(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 \* \* \*

\* \* \* \* \*

"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

"(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above \* \* \*

"(c) The only acceptable evidence to establish \* \* \*

\* \* \* \* \*

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

WEC's telegraphic modification was received by the Western Union Office, located on base, at approximately 10:00 a.m. on the day of bid opening. It was not picked up by the contracting office, however, until approximately 2:30 p.m. that day and was time/date stamped at 2:51 p.m.

The Navy takes the position that even though the modification was not received in the contracting office until after the time set for receipt of bids it should still be considered because its late arrival was due to Government mishandling. Specifically, the record includes a statement by a clerk in the contracting office attesting to the fact that she was notified by Western Union, at approximately 12:25 p.m. on bid opening day, that Western Union was holding a telegram intended for that office. The clerk, believing that Western Union was going to deliver the telegram, took no action until she received a second call from Western Union at approximately 2:30 p.m. inquiring as to why no one had been sent to pick up the telegram.

The Navy states that its policy is to dispatch someone to the Western Union office after being notified that a telegram has been received. The Navy argues that "the late modification may be accepted since \* \* \* the modification would have been timely received but for Government mishandling following timely receipt in the Western Union office."

CWC responds that the modification should not be considered since under the IFB and the Defense Acquisition Regulation (DAR), the time/date stamped on the bid wrapper is the only acceptable evidence to show timely receipt and here it clearly shows the modification was not received until after the time set for bid opening. Further, it argues that this is not a case of Government mishandling after receipt in the Government installation because the mishandling here occurred while the modification was in the hands of Western Union and our cases have held that receipt in an on-base Western Union office is not receipt in the Government installation for the purposes of the DAR.

In the past we have held that a modification received after bid opening could not be considered unless mishandling occurring after its receipt in the Government installation was the paramount cause for the failure of the modification to be timely received. Record Electric Inc., 56 Comp. Gen. 4 (1976), 76-2 CPD 315. Here, since receipt of the modification by Western Union is not the equivalent of receipt at the government installation for the purposes of the late bid clause, consideration of the modification would not appear to be appropriate. See 50 Comp. Gen. 76 (1970).

We have, however, recognized that a telegraphic bid modification received in the contracting office after the time set for bid opening may be considered where there was Government mishandling in the process of the receipt of, as opposed to after the receipt of, the modification, and where the Government mishandling was the paramount cause of the failure of the modification to be received at the Government installation prior to bid opening. Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD 331; I&E Construction Company Incorporated, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139.

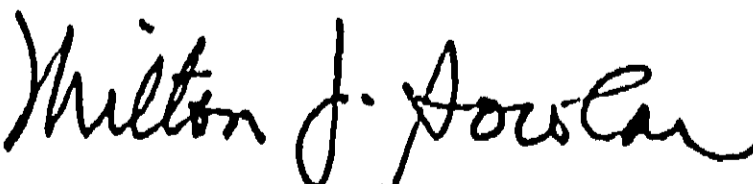
In those cases we held that because the agency received the modification after bid opening, mishandling after receipt in the Government installation did not contribute to the lateness so that consideration of the modification under the provisions of paragraph (c)(ii) of the late bid clause quoted above

is not appropriate. Instead we said that a strict and literal application of the regulation should not be utilized to reject a bid where to do so would contravene the intent and spirit of the late bid regulations. These regulations are intended to insure that late bids will not be considered if there exists any possibility that the late bidder would gain an unfair advantage over other bidders. The purpose of the rules governing consideration of late bids is to insure for the Government the benefits of the maximum legitimate competition, not to give one bidder a wholly unmerited advantage over another by over-technical application of the rules.

To support its position, the protester relies upon S&Q Corporation, B-186794, November 11, 1976, 76-2 CPD 402, where under a factual pattern similar to that presented here, we held that a late modification could not be considered. A significant factual dissimilarity, however, is that in S&Q the contracting office was not notified prior to bid opening that Western Union had received a telegraphic modification. We held that the delay caused by Western Union was the paramount cause of the late receipt of the modification and therefore, the Hydro Fitting and I&E rationale was inapplicable.

However, we believe the Hydro Fitting rationale is applicable to this case. Here the Navy was notified well in advance of bid opening that WEC's telegraphic modification had been received by Western Union. Had the Navy followed its procedures and dispatched someone to pick up the telegram there is no doubt that it would have been received prior to bid opening. We note, parenthetically, that when someone was dispatched after the second call by Western Union, the telegram was picked up, brought back to the contracting office, and time/date stamped, all within a period of approximately twenty-five minutes. Allowing consideration of WEC's bid under these circumstances will not result in the type of unfair competitive advantage which the regulations are designed to prevent. Accordingly the WEC bid, as modified, may be considered.

The protest is denied.

*for*   
Comptroller General  
of the United States