

**DECISION**



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

**FILE:** B-216976

**DATE:** August 13, 1985

**MATTER OF:** Westinghouse Electric Corporation

**DIGEST:**

1. Delayed receipt of bid by grantee Egyptian contracting ministries allegedly caused by Egyptian postal authorities during customs clearance is not ground for considering late bid since postal authorities are not employees/agents of contracting ministries and solicitation permitted consideration of late bids only where the sole cause of lateness was mishandling by the contracting ministries, not the postal authorities.
2. Late bid may not be considered on basis that acceptance would not prejudice competitive procurement system where protester was in possession of bid after bid opening and, therefore, could effect whether or not it would receive the award.
3. Complaint that bid opening scheduled by grantee should not have been the day after national holiday is untimely when first raised after bid opening.

Westinghouse Electric Corporation (Westinghouse) filed a complaint regarding the rejection of the bid submitted by its subsidiary, Westinghouse International Power Systems Company, Inc., under invitation for bids (IFB) No. EL-012, issued jointly by the Egyptian Ministry of Construction and the Egyptian State Ministry for Housing and Land Reclamation, for an electric substation. The Agency for International Development is funding the contract under a grant agreement between the United States and Egypt to provide low income housing in Egypt.

We deny the complaint in part and dismiss it in part.<sup>1/</sup>

Shortly before the June 19, 1984, bid opening, Westinghouse (through its Cairo office) submitted a price and advice that its complete bid could not be timely submitted due to delays in clearing the bid through Egyptian customs. The Cairo office hand-delivered Westinghouse's complete bid on June 20. Although Westinghouse's price was low, the Egyptian ministries determined that the price and advice alone were insufficient to constitute an acceptable bid since they did not contain the bid bond, certifications, and technical data required by the IFB. Since the complete bid was not delivered to the contracting ministries until after bid opening, the Westinghouse bid was rejected as late under invitation section 1.03(c), which provided that:

" . . . A late Tender [bid] will not be considered even though it becomes late because of factors beyond the Tender's control, such as delays in mail handling. A late Tender may be considered only when the sole cause for its becoming a late Tender was mishandling on the part of the Owner [the ministries issuing the invitation], his employees or his agents. Telegraphic Tenders will not be accepted. . . ."

Westinghouse argues that its bid should have been considered for either of two reasons. First, Westinghouse contends that the late bid clause permits consideration of its complete bid since the sole and paramount cause of the late arrival was the Egyptian government. Second, Westinghouse contends that acceptance of its bid would not have been prejudicial to the competitive bidding system because its prices were submitted prior to bid opening and its tender documents were delivered unopened shortly after bid opening following their delivery by the commercial carrier to Westinghouse's Cairo office.

---

<sup>1/</sup> As of January 29, 1985, we no longer review complaints concerning awards under grants. See 50 Fed. Reg. 3978 (1985) and The George Sollitt Construction Company, B-218101, Feb. 6, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 CPD ¶ 150.

Westinghouse states that the reasons for the late arrival were a sudden change in the normal processing of documents through customs, and the scheduling of bid opening the day after an Egyptian legal holiday. On June 14, Westinghouse gave a commercial carrier the complete bid for delivery to Westinghouse's Cairo office. The bid was at Egyptian customs on June 17, but, due to Egyptian Post Office instructions not publicized prior to that date, the commercial carrier was prevented from hand-carrying the bid through customs (as had previously been customary) and, instead, had to wait for postal authorities to clear it. The package was not cleared on June 17, and the customs office was closed the next day for the holiday.

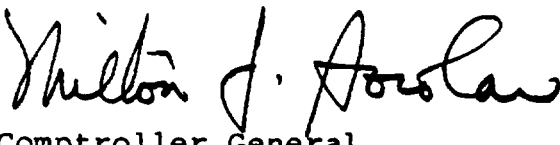
The general rule is that a late bid must be rejected unless it meets the specific conditions provided in the IFB. E.g., Retsina Co., B-212471, Aug. 3, 1984, 84-2 CPD ¶ 148. Since the IFB's late bid clause permitted the consideration of late bids only when the sole cause for lateness was mishandling of the bids by the issuing ministries, or their employees and agents, we believe that whether or not the lateness of Westinghouse's bid can be attributed to Egyptian postal or customs authorities is irrelevant. See Sandia Die and Cartridge Co., B-218011, Mar. 13, 1985, 85-1 CPD ¶ 308.

Regarding Westinghouse's argument that considering its bid would not prejudice the competitive bidding system, our Office has specifically held that consideration of a late hand-carried bid would compromise the integrity of the process. Monthei Mechanical, Inc.--Reconsideration, B-216624.2, Feb. 11, 1985, 85-1 CPD ¶ 177. Even though Westinghouse had already submitted its price before bid opening, it is clear that Westinghouse had not submitted all the information necessary to demonstrate compliance with the IFB's material terms and to bind Westinghouse to those terms. Thus, should Westinghouse have decided that it did not want the contract after all, it simply could have failed to complete delivery of the tender documents. Affording Westinghouse such an opportunity would compromise the integrity of the competitive procurement process. We have held on numerous occasions that the possibility the government might realize a monetary savings if an unacceptable bid is accepted, is outweighed by the importance of maintaining the integrity of the competitive procurement system. Parmatic Filter Corp., B-209296, Mar. 8, 1983, 83-1 CPD ¶ 234; Peerless Prosthetics Co., B-210878, Mar. 22, 1983, 83-1 CPD ¶ 292.

B-216976

To the extent Westinghouse complains that the IFB was deficient in designating the day after a holiday as the bid opening date, the protest is untimely. To be considered on the merits, a complaint alleging deficiencies on the face of a solicitation must be filed before bid opening or the time set for receipt of proposals, when corrective action is most practicable. ADB-Alnaco, Inc., B-212666, May 22, 1984, 84-1 CPD ¶ 537. Since Westinghouse did not complain about the IFB's designated bid opening date prior to bid opening, we will not consider this aspect of the complaint.

Accordingly, the complaint is denied in part and dismissed in part.

for   
Comptroller General  
of the United States