

DECISION



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

FILE: B-219649 **DATE:** October 30, 1985
MATTER OF: Delta Lighting Corporation

DIGEST:

1. Telegraphic bid modification, time/date stamped by the procuring activity 3 minutes after bid opening, is properly rejected as late, notwithstanding information from Western Union purporting to show that it was transmitted before bid opening, since the only acceptable evidence to establish timely receipt is the government's time/date stamp. Information from Western Union may not be used to establish either time of receipt or inaccuracy of time/date stamp.
2. Where bidder allegedly transmits modification lowering bid price by Western Union telex at 1:52 p.m. on the day of a 2 p.m. bid opening, its late receipt is due to the bidder's failure to allow sufficient time for delivery to the office designated in the solicitation, rather than to mishandling in the process of receipt. Agency therefore properly did not consider the modification.

Delta Lighting Corporation protests the rejection of a telegraphic bid modification as late and the award of a contract to Seiler Instrument and Manufacturing Company under invitation for bids (IFB) No. DAAA09-85-B-0372. The solicitation, issued March 1, 1985, by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM), Rock Island, Illinois, was for the acquisition of 380 Collimator mod kits. ^{1/} Delta contends that the telegraphic modification, which reduced its price and would have made it the low, responsive bidder, was timely received at the contracting activity and alleges that agency mishandling in the process of receipt caused it to be time/date stamped 3 minutes after bid opening.

^{1/} According to the agency, collimators are used on Howitzers to show that the gun is properly sighted, i.e., aimed at its target after having been fired.

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We find no merit in Delta's contentions, and we deny the protest.

Bid opening occurred on May 14, 1985, at 2 p.m. Delta has submitted with its protest a copy of a telex on which Western Union automatically indicated the time of transmission as 1352 (1:52 p.m.). Delta has also submitted a Western Union invoice which indicates that elapsed time for transmission of the modification was 2 minutes. Therefore, Delta argues, AMCCOM received the modification at least by 1:54 p.m., and must consider it.

According to an affidavit submitted with the agency report, AMCCOM's standard procedure for handling incoming telex messages is for employees seated approximately 6 feet from the teletype machine to remove the messages as soon as they are fully printed and to time/date stamp them, using an electronic machine. The Chief of the Communications Center at AMCCOM avers that several messages can be printed by the teletype and time/date stamped within the same minute. In addition, dates and times of receipt are manually logged. The affidavit indicates that these procedures were followed on May 14. The modification, however, is time/date stamped "134 1903 '85," which the agency translates as May 14, 1985, at 2:03 p.m.^{2/} The handwritten log shows the same time of receipt. The contracting officer, however, states that he did not receive the modification until 7:56 a.m. the following day and therefore did not consider it.

Delta responds that these procedures are inherently inaccurate, and that given the number of words a minute a teletype machine is capable of receiving, several messages cannot be printed and time/date stamped within the same minute. Delta contends that it is impossible to receive even two messages a minute, much less four as indicated by the agency. Delta further alleges that agency personnel appear to wait until a batch of messages has been received, then enter them all in the log at the same time. Delta contends that as a result, it may be impossible to establish the exact time of arrival of the telex at AMCCOM, and requests that our Office use information furnished by Western Union in determining that its modification was received before bid opening.

^{2/} The 134 refers to May 14, the 134th day of the year, and the 1903 is Greenwich Mean Time.

The general rule is that a telegraphic modification may be accepted only under the exact circumstances set out in a solicitation, and bidders must bear the responsibility for otherwise late modifications. X-Tyal International Corp., B-202434, Jan. 7, 1982, 82-1 CPD ¶ 19. Here, the IFB's late bid clause, which is the standard one set out in the Federal Acquisition Regulation (FAR), permits consideration of a telegraphic modification received at the office designated in the solicitation after bid opening if (1) it is received before award is made, and (2) the government determines that late receipt was due solely to mishandling after receipt at the installation. As provided in the clause and in our decisions, the only acceptable evidence of receipt at the government installation is the time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by the installation. FAR, 48 C.F.R. § 52.214-7 (1984); Keco Industries, Inc., B-204869, Apr. 7, 1982, 82-1 CPD ¶ 324. We have specifically held that information from Western Union is unacceptable to establish the time of receipt of the telex, id., and that records maintained by Western Union may not be used as proof of the inaccuracy of a time/date stamp. Allied Electrical, Inc., B-216548, Mar. 12, 1985, 85-1 CPD ¶ 304.

Generally, a protester must establish the time of receipt of a bid or modification at the government installation before we will consider alleged mishandling. X-Tyal International Corp., supra. In the absence of the type of evidence of timely receipt that is acceptable under the late bid clause, the question of government mishandling is irrelevant. Allied Electric, Inc., supra. Under this rule, the AMCCOM's time/date stamp and hand-written log, both indicating receipt at 2:03 p.m., would eliminate Delta's modification from consideration.

We have, however, established a narrow exception to this rule where, as here, a protester alleges government mishandling in the process of receipt. United Terex, Inc., B-209462, Feb. 28, 1983, 83-2 CPD ¶ 198 and cases cited therein. In our view, however, the late receipt of Delta's modification was not due to government mishandling in the process of receipt, but to the protester's failure to allow sufficient time for delivery to the office designated in the solicitation--which is what the late bid clause specifically requires. The contracting agency was reasonably prompt in processing the telex 11 minutes after it was allegedly transmitted. Further, even if we assume that the

modification arrived at the Communications Center at 1:54 p.m., as alleged by Delta, it was not reasonable for Delta to expect that it would be delivered to the area designated for receipt of bids within 6 minutes. The government is permitted a reasonable period of time to deliver a telegraphic modification to the area designated after receipt at the installation. 43 Comp.Gen. 317 (1963).

In our view, Delta's failure to send the modification no more than a few minutes before 2 p.m., its failure to identify the required time and place of delivery (which must be displayed on the envelope of any mailed or hand-carried bid), and its failure to indicate the need for prompt delivery are factors that contributed to late delivery of the modification. For this reason, we find that the agency properly refused to consider it.

The protest is denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel