

# DECISION



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

**FILE:**

B-222132

**DATE:** May 5, 1986

**MATTER OF:**

Bracco Construction Company

## DIGEST:

Protest that bid was not late is sustained where protester's time/date-stamped bid envelope is lost; contracting agency concedes that protester submitted its bid prior to bid opening; and record supports finding that bid was submitted on time.

Bracco Construction Company (Bracco) protests the award of a contract to Casey & Glass, Inc. (G&C), under invitation for bids (IFB) No. N62467-81-B-0812, issued by the Department of the Navy for a cold storage warehouse at the Naval Air Station, Corpus Christi, Texas. Bracco complains that its low bid should not have been rejected as late. We sustain the protest.

The IFB originally scheduled bid opening for 3 p.m. on December 3, 1985. By amendment 0002, issued November 26, the Navy changed a number of specifications and moved the bid opening date to December 17. The amendment, however, contained a clerical error, stating that the bid opening was postponed "from 2:30 PM" on December 3 to 2:30 p.m. on December 17. Recognizing this error in the amendment, personnel at the facility proceeded to conduct the December 17 bid opening at 3 p.m., as was customary at the facility.

Three bids were received. Pinnacle Construction Company was the low bidder, Bracco was second low, and C&G was third low. Pinnacle withdrew its bid because it contained an error, and C&G then protested to the Navy against the acceptance of Bracco's bid, claiming that Bracco submitted its bid at 2:33 p.m., 3 minutes late. Thereafter, the Navy notified Bracco that its bid would not be considered and awarded a contract to C&G.

Bracco protests that its bid was not late. Although it submitted its bid prior to 2:30 p.m., Bracco explains, Navy personnel, acting under the erroneous assumption that bid opening was at 3 p.m., presumed that they had half an hour

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until the bid opening and, thus, were slow in their handling of Bracco's bid. As a result, Bracco contends, its bid was time/date stamped after the official bid opening. The Navy states that Bracco's time/date-stamped bid envelope is lost, but attests to the veracity of Bracco's statement. Indeed, the Navy recommends that we sustain Bracco's protest. C&G, however, contends that Bracco's bid was submitted late and that the award of this contract was properly made to C&G.

Initially, we point out that the issue here does not center on when Bracco's bid was stamped. As shown above, despite the fact that Bracco's time/date-stamped envelope is lost, all parties agree that Bracco's bid probably was stamped late. The issue, instead, is whether Bracco surrendered control of its bid to government contracting personnel in the office designated for receipt prior to bid opening, thus making Bracco's bid eligible for consideration by the Navy. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1 (1984).

Generally, only a time/date stamp on the bid wrapper or other documentary evidence of receipt maintained by the government installation is acceptable evidence of the receipt of a bid by the government. FAR, 48 C.F.R. § 14.304-1(c). We have held, however, that where, as here, the issue is whether a hand-carried bid was timely received, all relevant evidence in the record may be considered. See All-States Railroad Contracting, Inc., B-216048.2, Feb. 11, 1985, 85-1 C.P.D. ¶ 174. Statements by government personnel, for example, are competent evidence of the time of receipt. Id.

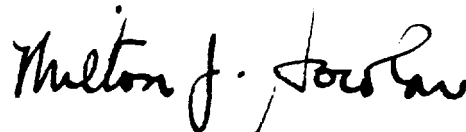
We believe that a preponderance of the evidence in the record here indicates that Bracco's bid was submitted to the Navy prior to bid opening. Bracco's representative, by affidavit, states that he entered the bid opening room prior to 2:30 p.m., conversed with officers present there, and observed that several minutes had elapsed between the time he submitted the bid to Navy personnel and the time the bid was stamped. The Navy, in its report, confirms that Bracco's bid was submitted prior to bid opening and essentially reiterates Bracco's rendition of the facts, noting that the Resident Officer in Charge of Construction engaged in a conversation with the Bracco representative after accepting the Bracco bid and before submitting the bid to the designated bid opening officer. Though the record includes a memorandum from the designated bid opening officer stating that Bracco's bid was received after 2:30 p.m., when read with the entire Navy report, it appears

that the officer's statement refers to the time when she received Bracco's bid and not the time the bid first was submitted to Navy personnel. In fact, the bid opening officer recommends that Bracco's bid not be considered a late bid.

The record does not corroborate the statements of C&G's representative who was present at the bid opening and who, by affidavit, states that he read 2:33 p.m. on the wall clock when Bracco's representative arrived to submit Bracco's bid. Aside from the contradiction between C&G's allegation and the statements of Bracco and the Navy, the affidavit of a South Texas Materials employee who was in attendance at the bid opening<sup>1/</sup> confirms that Bracco was present in the bid opening room prior to 2:30 p.m.

In short, we believe that the record indicates that Bracco's bid was submitted timely; because Bracco was the next low bidder after Pinnacle, Bracco should be awarded a contract for this procurement. By separate letter to the Navy, we are recommending that the Navy terminate C&G's contract for convenience and award a contract for the requirement to Bracco, if otherwise appropriate.

The protest is sustained.



Comptroller General  
of the United States

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<sup>1/</sup> This affidavit was provided by C&G to detract from the employee's earlier affidavit. The earlier affidavit was submitted by Bracco with its protest and stated that Bracco's bid was both submitted and accepted before 2:30 p.m.; in the second affidavit, the individual states that he did not actually see the government accept the bid.