



The Comptroller General
of the United States

Washington, D.C. 20548

Jones

Decision

Matter of: Valley Steel and Supply Co., Inc.
File: B-235400
Date: May 26, 1989

DIGEST

Where sales contract specifies that bid deposit must be received at a particular location, receipt at a different location at the government installation--a branch of a private bank--does not make the bid deposit timely when the bank is not acting as the agent of the government.

DECISION

Valley Steel and Supply Co., Inc., protests the rejection of its telegraphic bid deposit as late under Sale No. 41-9189 conducted by the Defense Logistics Agency (DLA).

We dismiss the protest without obtaining an agency report since it is clear from the record that the protest is without legal merit. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1988).

According to the terms of the sale, bid deposits were to be received by 10 a.m., on April 11, 1989. Telegraphic bid deposits were authorized. Valley Steel submitted its bid deposit telegraphically through the First Security Banking System which was recommended by the contracting officer to facilitate a quick transfer of funds because a branch of that bank is located on the government installation. The bid was rejected because the bid deposit was not received by the contracting officer until after the time set for bid opening.

Valley Steel argues that its bid deposit should have been considered because it was received at the bank on the installation prior to the time specified for bid opening, and that this put the deposit "effectively in the control and possession" of the contracting officer by bid opening. We disagree.

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The terms of the sale specified that bid deposits must be in the possession of the contracting officer at the time of bid opening. The protester's submission includes a letter from DLA in which the agency explains that the First Security Bank is a private entity that has not been designated as an agent of the government or of the contracting officer, and that there is no account maintained by the government in that bank into which funds could be deposited. Accordingly, while the contracting officer recommended use of the bank to facilitate a prompt transfer of funds, it appears that the bank itself is not an agent of the government. Therefore, even if the bank timely received the funds--a matter not at all clear from the submission--the receipt by the bank cannot be viewed as receipt by the contracting officer.

According to the agency, the bank did not inform it until 11 a.m., 1 hour after bid opening, that the bid deposit was ready to be picked up. The protester does not dispute this. Therefore, it is clear that the bid deposit was not timely received by the contracting officer. Accordingly, rejection of the bid deposit was proper.

The protest is dismissed.



Ronald Berger
Associate General Counsel