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Approved by B-143376  
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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25



AUG 25

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AUG 25 1953

The Administrator of Veterans Affairs

Veterans Administration

My dear Mr. Administrator:

I have your letter of August 10, 1953, with enclosures, requesting a decision as to whether there may be accepted a telegraphic bid submitted by the W. J. Parker Construction Company, Omaha, Nebraska, for the construction of a 12-inch water line for the automatic sprinkler system at the Veterans Administration Hospital, Fort Meade, South Dakota, in view of the conditions attending the submission of said bid.

In your letter of August 10, 1953, it is stated that:

"In accordance with Invitation For Bids dated July 1, 1953, the bids were opened for the work indicated at 1:30 P.M. E.S.T. (2:30 P.M. S.D.T.) July 28, 1953, in the Construction Service, Veterans Administration, Washington, D.C. The only bids received were the written bid of the Bushlight Automatic Sprinkler Company, Portland, Oregon, in lump sum amount \$59,492.48, and a telegraphic bid dated lined 'Omaha, Nebraska, July 29, 11:01 A.M.' received in the Veterans Administration July 28, 1953, at 12:18 P.M. E.S.T. via tie line with the Western Union, from W.J. Parker Construction Company, as follows:

"Our bid on installation of 12 inch waterline at Fort Meade South Dakota in amount of \$31,833.00 plus 8.00 per linear foot in excess of 3750 linear feet mailed to you from Rapid City South Dakota this morning"

"The written bid of W. J. Parker Construction Company received by the Veterans Administration by registered mail at 12:30 P.M. E.S.T. July 29, 1953, is postmarked 'Rapid City, South Dakota, July 28, 1953'."

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Information secured informally in the Registry Section, City Post Office Washington, D.C., confirms the obvious exclusion that a bid thus mailed was not mailed in time to have been received by the Veterans Administration, Washington, D.C. prior to the hour set for opening the bids. The written bid, while quoting the lump sum of \$31,833.00 for the work, makes no mention of an additional amount of '\$8.00 per linear foot in excess of 3750 linear feet' stated in the telegram. Since it is indicated that the telegram was dispatched subsequent to the bid, it would appear that the telegram expresses the intended bid. \* \* \*

Both the invitation for bids and the drawing included in the specification indicate that the work includes approximately 3750 feet of 12" cast iron waterline; but the project as advertised did not provide for a specific length of the run of 12" cast iron waterline nor for unit price adjustment of any overrun in excess of the estimated footage of 3750 feet. In other words, bids were requested on the basis of a lump-sum price for the job. You state, however, that it has been determined by a survey that the footage involved could not exceed 4078; and for that maximum footage the telegraphic bid of P. J. Parker Construction Company, which was subsequently confirmed by telegram of August 5, would be \$34,457 or \$25,035 less than the only other bid received.

Paragraph 5d of Instructions to Bidders provides that "Unless specifically called for, telegraphic bids will not be considered." Telegraphic bids were not called for in the invitation. Likewise, Paragraph 5b of the "Instructions" states that the form of bid would provide for quotation of prices which might be lump-sum bids or scheduled prices on units of construction or a combination thereof;

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and paragraph 6 thereof requires bids to be submitted as directed on the bid form. The bid form and Paragraph 3 of the General Requirements provide for a lump-sum bid. However, both the Instructions to Bidders (Par. 11b) and the General Conditions of the Specifications, (Paragraph 3) reserve to the Government the right to waive any informality in bids received when such waiver is in the interest of the Government.

Your letter poses the questions whether the submission of a telegraphic bid is an informality which may be waived in the Government's interest; and, if so, whether the submission of a bid on a combination lump-sum and unit price basis when only lump-sum bids were requested may likewise be so considered.

The principles for application in such cases were stated in 30 Comp. Gen. 179, 181, as follows:

"The question as to whether deviations from the requirements of advertised specifications might be waived after the opening date has been before this Office many times; and it has been consistently held that such deviations may be waived provided they do not go to the substance of the bid or work an injustice to other bidders. In other words, the primary question for determination in this and similar cases is whether the deviation proposed to be waived goes to the substance of the bid so as to affect either the price, quantity, or quality of the articles offered and therefore is prejudicial to the rights of other bidders or is merely a matter of form or some immaterial variation from the exact requirements of the specifications such as would not affect either the price, quality, or quantity of the articles offered.

\* \* \* the purpose of the statutory requirement of advertising for bids in matters of this type is to secure free and open competition among bidders in order that the needs of the Government may be supplied upon the most advantageous terms available and to give all

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persons an equal right to compete for Government business. To insure to the Government the benefits of such competition it is essential that awards of contracts be fairly made upon the basis of the essential requirements of the specifications submitted for competition. While the Government reserved the right in the invitation for bids to waive any informality in bids received, the informalities which may be waived are those of form and not of substance, or of some immaterial and inconsequential defect in or variation of a bid from the exact requirements of the advertised invitation and specifications. \* \* \*

However, it has been held with respect to a substantially similar provision regarding the consideration of telegraphic bids that its manifest reason was to put bidders on an equal basis and to prevent any bidder from obtaining an advantage over other bidders; and that where the reason for the rule does not exist, it should not be applied. Laitman v. United States, 104 S. Cls. 324, 340; Cf. Miller v. United States, 123 Id. 430.

In the instant case, both the telegram and bid form had been dispatched before the time set for opening of bids. The telegram was received before opening; the bid form was not. It is evident that the sender could not have had any knowledge of any other bids, and could not have gained any advantage over other bidders from its submission of a telegraphic bid. In this particular case, therefore, the failure to comply strictly with the terms of the Instructions to Bidders may be considered to be an informality which may be waived in the Government's interest.

Likewise, the manner in which the bid was stated, i.e., a lump sum of \$1,533 plus \$8 per linear foot in excess of 3750 feet,

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does not appear to be a deviation which goes to the substance of the bid, since the maximum footage is readily determinable by both the bidders and the Government, and the maximum amount of the telegraphic bid has been established by you.

Accordingly, under the circumstances of this particular case, this Office would not be required to object to the acceptance of the bid of W. J. Parker Construction Company.

The papers, including the envelope in which the bid was mailed, are returned herewith.

Sincerely yours,

Lindsay C. Warren

Comptroller General  
of the United States

Enclosures