

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**60575
98548

FILE: B-185507

DATE: March 1, 1976

MATTER OF: Fred Schwartz

DIGEST:

Where protester's bid was date stamped day after bid opening and delay by sales office personnel or designees not shown, bid was properly rejected where IFB provides that bids must be in possession of contracting officer by time set for bid opening and bids received after opening will not be considered unless received before award and mailed and delivered to proper address in time to have been received by contracting office before bid opening except for delay attributable to personnel of sales office or designees.

The Defense Property Disposal Region, Defense Supply Agency (DSA), Ogden, Utah, solicited bids pursuant to invitation for bids (IFB) 41-6233 for the sale of various surplus items with bid opening set for 10 a.m., December 9, 1975. Mr. Fred Schwartz has protested the rejection of his bid by DSA as late. Although Mr. Schwartz's bid was postmarked December 6, 1975, it was not received by DSA at Ogden Station, Ogden, Utah, until December 10, 1975 (the bid envelope bears a December 10, 1975, DSA date stamp), 1 day after bid opening.

Mr. Schwartz contends that his bid was late due solely to mishandling by DSA personnel and therefore that it should be considered as timely. In support of such contention Mr. Schwartz argues: (1) he mailed his bid at the World Airways Postal Station, Los Angeles International Airport, at 11 a.m. on December 6, 1975; (2) there were 17 mail flights between December 6, 1975, and December 8, 1975, from Los Angeles, California, to Salt Lake City, Utah, that his bid could have been on. (Mail going from Los Angeles, California, to Ogden, Utah, apparently moves by air from Los Angeles to Salt Lake City and by truck from Salt Lake City to Ogden); and (3) it usually takes 3 days for mail deposited prior to 5 p.m. at Los Angeles to travel from Los Angeles to Ogden. Mr. Schwartz

also contends that: (1) a modification to his bid was received by DSA before bid opening; (2) records kept by the contracting officer of conversations with and correspondence received from him are inaccurate; and (3) the bid deposit enclosed was in the amount of \$820.00 rather than \$20.00 as alleged by DSA.

In support of these allegations, Mr. Schwartz has submitted mail flight schedules of the United States Postal Service purporting to show the number of daily mail flights between Los Angeles and Ogden between December 6 and December 8, 1975, copies of check stubs, and copies of correspondence with DSA.

Part 3, paragraph "C" of the Sale by Reference pamphlet (August 1973), incorporated by reference in the subject IFB, states:

"Bids and modifications or withdrawals thereof, must be in the possession of the Contracting Officer by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by the Contracting Officer prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Contracting Officer by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. In no event will hand-carried bids or withdrawals be considered if delivered to the Contracting Officer after the exact time and date set for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received prior to award and may be accepted."

We have held that it is the bidder's responsibility to assure that his bid arrives in time for a scheduled bid opening and that late receipt of a bid will result in its rejection unless the

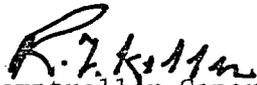
specific conditions set forth in the IFB are met. 49 Comp. Gen. 191 (1969); Solvent Chemical Company, Incorporated, B-181033, June 21, 1974, 74-1 CPD 338. Under the above-quoted language of paragraph "C," it is clear that a bid or modification received after the time set for bid opening can be considered only upon evidence establishing that it was in fact delivered to the place specified in the IFB in sufficient time to have been received by the sales contracting officer by the time set for bid opening. Fred Schwartz, B-180462, March 12, 1974, 74-1 CPD 131.

In the instant case, Mr. Schwartz has not established that the bid was, in fact, delivered to the specified address in the IFB before bid opening. The fact that a certain number of mail flights between Los Angeles and Ogden allegedly took place over a given period of time does not establish that the bid in question was on any of these flights or that it was delivered to the place specified in the IFB in sufficient time to have been received by the sales contracting officer prior to bid opening. Moreover, as previously noted, documentary evidence in the form of a DSA date stamp on Mr. Schwartz's bid envelope indicates that the bid was not received at Ogden Station until December 10, 1975, 1 day after bid opening. Therefore, from the record before us, we must conclude that Mr. Schwartz's bid was not mishandled by personnel of the contracting activity sales office or their designees, as Mr. Schwartz contends, but rather, was delivered to Ogden Station after bid opening. Although Mr. Schwartz's bid modification was apparently received by the contracting officer before bid opening this does not change the fact that the bid itself was not received until after bid opening. In this regard, Mr. Schwartz argues that bid modifications submitted by him in connection with other Government surplus sales procurements have been accepted by DSA and resulted in valid contracts. However, in those instances cited by Mr. Schwartz, apparently both the bids and the modifications were received prior to bid opening. Such is not the case here. As noted above, although the modification was received before bid opening, the bid itself was not received until after bid opening. Therefore, pursuant to paragraph "C," supra, we conclude that Mr. Schwartz's bid was properly rejected as a late bid. In view of our above-stated conclusions, it is unnecessary to consider the other allegations raised by Mr. Schwartz in his protest.

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Accordingly, the protest is denied.


Deputy Comptroller General
of the United States