

Proc II

DECISION



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

10,509

FILE: B-193357

DATE: June 19, 1979

MATTER OF: Monitor Northwest Company

DIGEST:

1. In the absence of acceptable evidence that bid modification was received prior to bid opening, modification was properly rejected as late, notwithstanding documentary evidence from Western Union signifying delivery at the Government installation before bid opening time. The only acceptable evidence to establish the time of receipt by the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation. Although evidentiary rule does not apply if Government prevents delivery, record does not indicate that Government did so in this case.
2. Even if protester could show by acceptable evidence that bid modification was received at Government installation 5 minutes before bid opening, it is unrealistic to assume that document not marked as a bid or bid modification should have reached the designated office within the installation prior to bid opening in the absence of any mishandling by Government personnel.

late bids  
Bid modification  
file accordingly

DLG 01860

Monitor Northwest Company (Monitor) protests the award of a contract to Tara Electric Service (Tara) as the low bidder under invitation for bids (IFB) No. 1720-78B, issued by the Boston National Historical Park, National Park Service. Monitor asserts that a telegraphic modification which reduced its bid price below that of Tara was improperly rejected by the Park Service as a late modification.

DLG 01861

Bid opening was scheduled for 2:00 p.m. on September 19, 1978. Under the terms of Standard Form 22 (Clause 7, Late Bids and Modifications or Withdrawals), a late bid is one received in the office designated in

[Protest Concerning Proposal  
REJECTION]

005725

the IFB after the exact time set for opening. Monitor's bid modification did not arrive in the designated office by the 2:00 p.m. deadline and therefore was late within the definition of the regulation. However, although late, a modification is not necessarily eliminated from consideration by the contracting agency. Clause 7 provides, in pertinent part, as follows:

"Late Bids, Modifications of Bids, or Withdrawal of Bids. (a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and:

\* \* \* \* \*

"(2) It was sent by mail (or telegram if authorized) and it was determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government Installation." (Emphasis supplied.)

\* \* \* \* \*

"(c) The only acceptable evidence to establish:

\* \* \* \* \*

"(2) The time of receipt at the Government installation is the time date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation." (Emphasis supplied)

In the present case, Monitor's modification was sent by telegram. Since telegraphic modifications are authorized by the solicitation it could be considered even though it was received late, but only as permitted in the above quoted provisions. Monitor maintains that its modification arrived at the Government installation five minutes before the 2:00 p.m. bid opening, and that

late receipt at the designated office was due solely to mishandling by the Government after receipt at the installation. In support of its assertion, Monitor offers the Western Union Route-Call record. It was signed by a secretary, at the Boston National Historical Park office, who received the telegram. The evidence from Western Union indicates delivery to the Government installation at 1:55 p.m.

In a late bid situation (where a bid arrives in the office designated for receipt after opening), before we can consider the question of mishandling, the time of receipt at the Government installation prior to bid opening must be established. B. F. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145; Robert Yarnall Richie Productions, B-192261, September 18, 1978, 78-2 CPD 207.

Upon delivery of the telegram to the Procurement Specialist, she manually inserted the date and time of receipt and initialed the notation. This shows that the telegram was receipted for at 3:12 p.m., one hour and twelve minutes after bid opening. The Government nevertheless agrees with Monitor that its modification arrived at the installation some time before 3:12 p.m. However, there is no acceptable evidence of when the modification was received at the Government installation since the only evidence consists of records maintained by Western Union, rather than the Government, as required by the late bid clause. ✓

Monitor, however, citing Federal Contracting Corporation, 56 Comp. Gen. 737 (1977), 77-1 CPD 444, and F&E Construction Company, Incorporated, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139, contends that the late bid clause should not be controlling. Both of these cases present situations where the time date stamps showing receipt after bid opening were disregarded because delivery at the Government installation was prevented by acts or failure attributable to the Government. However, such cases are not applicable here; Monitor neither contends nor presents any evidence that the Government prevented delivery of the modification. It asserts only that there ✓

was mishandling after receipt at the Government installation. On this record, we find that Monitor's modification was properly rejected by the Boston National Historical Park.

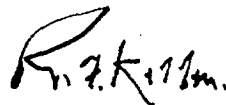
We would be of that view, even assuming that the protester could show by acceptable evidence that the telegram was received before bid opening, because it would have to show, further, that the modification's late arrival at the designated office was caused solely by Government mishandling. Where bids or modifications are received at one place by the Government for delivery by it to another place specified in the invitation, the Government has a duty to establish procedures calculated to insure that the physical transmission of bids is accomplished within a reasonable time after receipt. The determination of what constitutes a reasonable internal procedure and time for transmission at one Government installation is not necessarily for application at all installations; rather, it is uniquely for determination by the administrative agency involved. Our role must be restricted to determining whether the agency position is arbitrary, capricious or unsubstantiated. Lectro Magnetics, Inc., 56 Comp. Gen. 51 (1976), 76-2 CPD 371.

Even if the telegram arrived at the installation at 1:55 p.m., delivery to the designated office would have been required in five minutes. It is true that if the telegram was immediately recognized as a bid modification due at 2:00 p.m., it may have been possible to deliver it in time. However, the telegram was not marked as a bid or modification and had the telegram been opened upon receipt by the secretary, she would have found nothing in the message specifying the time of opening or indicating any special urgency. We believe that it is unrealistic to assume that such a document should have reached its ultimate destination five minutes after its receipt at the Government installation even in the absence of any mishandling by Government personnel.

In order to protect the integrity of the bidding process, this Office has recognized that strict application of the rules governing late bids and modifications is necessary. This view has been evidenced by

prior decisions of this Office approving the rejection of bids submitted only a few minutes late. We have held consistently that the bidder has the responsibility to assure timely arrival of its bid or modification and must bear the responsibility for its late arrival unless specific criteria of Clause 7 are met.

The protest is denied.



Deputy Comptroller General  
of the United States