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DECISION

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

FILE: B-213145, B-213145.2 **DATE:** April 24, 1984

MATTER OF: Edmonds Electric Company; Warren's Air Conditioning & Heating Service Inc.

DIGEST:

1. Bid may not be considered for award under IFB late bid provisions where (1) bid was not sent by registered or certified mail and (2) the procuring agency's time-date stamp shows that the bid was received at the agency's installation after bid opening.

2. Bid may not be considered under exception permitting acceptance of late bids where sole or paramount cause of lateness was government mishandling in the process of receiving the bid since bidder contributed to lateness of bid by failing to indicate on envelope that envelope contained a bid.

Edmonds Electric Company (Edmonds) protested the Department of the Army's (Army) rejection of its bid as late under invitation for bids (IFB) No. DAKF40-83-B-0300. Warren's Air Conditioning & Heating Service Inc. (Warren's) protests the Army's subsequent decision to consider Edmonds' late bid.

Edmonds' protest is denied and Warren's protest is sustained.

The IFB, issued on August 23, 1983, provided that bids would be accepted until 11 a.m., eastern standard time, on September 21 at the contracting division, building 1-3333, basement, room 10, Fort Bragg, North Carolina. Mailed bids were to be addressed to "Contracting Division, Drawer 70120, Fort Bragg, North Carolina 28307." The IFB instructed bidders to mark the outside of the sealed envelope containing the bid with "Bid," the IFB number and the date and time of bid opening.

At bid opening, Warren's bid was the apparent low bid submitted. Edmonds' bid was discovered on September 21 at 12:01 p.m., in the contracting administrative office, the room designated in the IFB for receipt of bids. The envelope containing Edmonds' bid was not marked to indicate that it contained a bid. The record indicates that Edmonds' bid was mailed by Express Mail and it arrived at the post office

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drawer specified in the IFB at approximately 4 a.m. on September 21. A postal service employee attempted to deliver the bid to Fort Bragg, but was unsuccessful because the contracting office does not open until 7:30 a.m. Edmonds' unmarked bid was transmitted from the post office drawer to the contracting division pursuant to Fort Bragg's standard procedure for mail pickup and distribution.

In accordance with these procedures, a mailclerk picked up the Fort Bragg mail, including Edmonds' bid, between 9:30 and 10 a.m. on September 21 and returned the mail to building 1-3333. Because the bid was contained in an Express Mail envelope, it was considered "accountable mail" and delivered to the administrative office of the Directorate of Industrial Relations (DIO), where it was logged in and placed in the mailbox for the contracting division. The Army reports that this sorting and distribution process could take approximately 1 hour. At approximately 12 p.m., a clerk from the contracting division picked up the mail from the contracting division mailbox, brought the mail to the contracting division and stamped it with the time-date stamp. The envelope containing Edmonds' bid was stamped at 12:01 p.m. on September 21. The envelope was then opened and Edmonds' bid was discovered. If Edmonds' bid may be considered, Edmonds becomes the low bidder.

The contracting officer first decided to reject Edmonds' bid as late because the bid was not in the contracting division by 11 a.m. By a telegram dated September 21 and a letter dated October 12, 1983, Edmonds protested this decision to GAO. Edmonds alleged that its late bid could be considered under the IFB's late bid provisions because government mishandling caused the bid's late arrival in the contracting division. Edmonds argues that since its bid was picked up by the Fort Bragg mailclerk by 10 a.m., the Army had sufficient time to deliver the bid to the contracting division by 11 a.m.

The Army reviewed its previous decision and determined that Edmonds' late bid could be considered for award. The Army reached this decision by concluding that the IFB was ambiguous because it listed one address for mailed bids and a different address for bid opening. In response to Warren's protest, the Army argues that because the contracting division mailclerk does not pick up the mail until approximately 12 noon, Edmonds' bid would not have been delivered to the contracting division by the 11 a.m. bid opening even if the envelope had been marked to show it

contained a bid. The Army concluded that Edmonds' bid could be considered for award because the Army's procedures were tantamount to government mishandling in the receipt of bids.

Warren's then protested to this Office that Edmonds' late bid should not be considered for award.

The IFB late bid clause, taken from Defense Acquisition Regulation (DAR) § 7-2002.2 (Defense Acquisition Circular No. 76-18, March 12, 1979), provides that a late bid may be considered for award if it is mailed by registered or certified mail at least 5 days before bid opening or if the bid arrives at the procuring agency's installation on time but, as a result of government mishandling, the bid arrives late at the place specified for bid opening.

Since Edmonds' bid was mailed by express mail, rather than by certified or registered mail, it may only be considered under this exception if it arrived late at the contract division as a result of government mishandling after its timely receipt at the Fort Bragg installation. Aetna Supply, Inc., B-203002, June 8, 1981, 81-1 CPD 462. Before a bid which arrives late at the place of bid opening may be considered for award, it first must be determined that the bid timely arrived at the government installation. In this sense, government installation refers to the Fort Bragg base, rather than to the Fort Bragg's post office drawer at the United States Post Office. See The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21. The only evidence which may be used to determine if the bid arrived at the installation on time is the agency's time-date stamp or other documentary evidence maintained by the installation. Standard Mfg. Inc., B-209575, March 7, 1983, 83-1 CPD 216. DAR § 7-2002.2(c).

Here, although Edmonds' bid was logged in the DIO between 9:30 and 10 a.m., it did not arrive in the contracting office until 12:01 p.m. If we consider the "logging in" at DIO as documentary evidence of timely receipt at the installation, the question is whether government mishandling was the cause of the bid's arriving in the contracting office after bid opening. We think the answer is "no," because the record indicates that normal delivery procedures were followed since the envelope was not marked as containing a bid. On the other hand, the record shows that had the bid envelope been so marked, it would have been opened in DIO and "handled expeditiously." Thus, Edmonds' bid may not be considered for award under the IFB's late bid provisions.

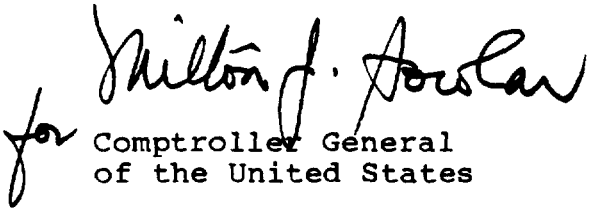
This Office has recognized that a late bid may be considered for award where it arrives late solely because of government mishandling in the process of receiving the bid. Sun International, B-208146, January 24, 1983, 83-1 CPD 78. Thus, where the IFB provides for a bid to be mailed to a post office drawer and the procuring agency must subsequently pick up the bid and deliver it to the place of bid opening, the agency has an obligation to establish procedures to insure that the bid is timely delivered to the place of bid opening. See id.; Monitor Northwest Company, B-193357, June 19, 1979, 79-1 CPD 437; 49 Comp. Gen. 697, 699 (1970). If the agency's failure to have or follow such procedures is the sole or paramount reason for a bid's late delivery, the bid may be considered. See Sun International, supra; Utah Geophysical Inc., B-209503, March 22, 1983, 83-1 CPD 288.

Although the Army initially justified its acceptance of the late bid on the basis that the IFB was ambiguous because it listed one address for mailed bids and another address for bid opening, it appears to have abandoned that position and now argues that its failure to have procedures to insure the prompt delivery of bids from the post office to the contracting division was the sole reason that Edmonds' bid arrived at the contracting division after 11 a.m. However, as noted above, there are established procedures for picking up mail at the post office and those procedures were followed. Moreover, the record indicates that but for the failure of the envelope to be marked, those procedures would have insured timely delivery. The Army also notes that the mailclerk from the contracting division does not pick up the division's mail until approximately 12 noon.We agree that this procedure is not adequate to insure the timely delivery of a bid destined for an 11 a.m.bid opening; however, we cannot conclude that this was the sole or paramount reason that Edmonds' bid was received late at the contracting division. At one point in its report the Army states that even if the envelope had been marked to show it contained a bid, it would not have been delivered by bid opening because the mailclerk does not pick up mail until approximately 12 noon. Nevertheless, we note the contracting and legal officers have indicated that there are expedited delivery procedures for bids that are so marked. However, since Edmonds did not follow the IFB instructions and mark the outside of its envelope to show it contained a bid, there was nothing to notify mail personnel that Edmonds' bid required prompt delivery to the contracting division. See Edison Electronics Division, Armtec Industries, Inc., B-202342, June 10, 1981, 81-1 CPD 478. Thus, Edmonds

contributed to the late delivery of its bid and the bid may not be considered under the exception. Cf. Skip Kirchdorfer, Inc., B-199628, November 28, 1980, 80-2 CPD 401.

Consequently, there is no basis on which Edmonds' late bid may be considered for award. Therefore, an award should be made to Warren's if it is determined that Warren's low bid is responsive and Warren's is a responsible bidder.

Edmonds' protest is denied and Warren's protest is sustained.



for Comptroller General
of the United States