



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

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B-179221

October 29, 1973

Coleman Enterprises
12323 Gladstone Avenue
Sylmar, California 91342

Attention: Mr. Robert L. Coleman

Gentlemen:

Reference is made to your letter of September 25, 1973, and prior correspondence, protesting the decision of the Naval Facilities Engineering Command, El Toro (Santa Ana), California, not to consider your late bid and the awarding of a contract to D & S Engineering Corporation under invitation for bids No. M62474-73-B-3505.

The invitation was issued June 11, 1973, for construction of an addition to existing Building No. 161, modifications to existing space in Building No. 161, and the construction of a prefabricated metal building at the Marine Corps Air Station (MCAS), El Toro (Santa Ana), California. Bids were scheduled for opening at 11 a.m., Friday, June 29, 1973. Three bids were received at bid opening time. On June 29, 1973, an award was made to D & S Engineering Corporation.

On July 2, 1973, a bid which had been sent by certified mail by your firm was received by the Officer in Charge of Construction, Naval Facilities Engineering Command, Contracts, MCAS, El Toro, California. The postmarks on the envelope indicated it had been mailed on Wednesday afternoon, June 27, 1973, and received by the MCAS El Toro post office on Saturday, June 30, 1973.

By letter dated July 5, 1973, the contracting office advised you that the contract had been awarded to the D & S Engineering Corporation, the low responsive bidder, on June 29, 1973; that your bid was received by the MCAS El Toro post office on June 30, 1973; and that since the Armed Services Procurement Regulation does not provide for consideration of late bids after award has been made, your bid was being returned unopened.

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[Protest of Rejection of Late Bid]

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You claim that your company should not be penalized and deprived of consideration of its bid because the late receipt of the bid was directly attributable to improper handling by postal employees from time of deposit, Wednesday afternoon, June 27, 1973, to delivery in El Toro, California. You contend that since your bid price for the work involved is lower than the price quoted by D & S, the contract awarded to that firm should be canceled; that you should be permitted to resubmit your bid to the procuring activity; and that the contract be reawarded to your firm. You maintain that the action of the contracting officer in rejecting your late bid is most unfair and unjust to your firm.

The invitation cautioned all bidders to take notice of the Instructions to Bidders (Construction Contract), Standard Form 22, Oct. 1969, which was incorporated by reference. Paragraph 7 of the Instructions To Bidders provides, in pertinent part, as follows:

"(a) Bids * * * received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless: (1) They are received before award is made; and either (2) they are sent by registered mail, or by certified mail * * * and it is determined by the Government that the late receipt was due solely to delay in the mails for which the bidder was not responsible; or (3) if submitted by mail * * * it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation * * *."

The conditions set forth in paragraph 7 of the Instructions To Bidders followed the provisions of paragraph 2-303.3 of the Armed Services Procurement Regulation (ASPR) (1969 edition).

With your letter of July 18, 1973, you submitted a copy of Standard Form 22 (October 1969), Instructions To Bidders (Construction). It is noted that you have underlined the last sentence of paragraph 7(a) thereof which states, "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." It appears that you are suggesting that the quoted sentence permits consideration of a late

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bid at any time it is received. It is obvious that the quoted sentence has reference to the late modification of an otherwise successful bid and not to a late bid which, if opened, might be determined to be the lowest.

Late receipt of a bid will result in its rejection unless the specific conditions set forth in ASPR are met. One of the essential conditions that must be met before a late bid may be considered is that it be received before an award is made. However, your bid did not arrive at the office designated in the invitation for bids until after the award of the contract. Our Office is of the view that the language in the Instructions To Bidders and the ASPR concerning late bids is definite and all bidders must be held to its terms. See 42 Comp. Gen. 255, 257 (1962); B-173268, September 22, 1971. Since your bid was not received prior to award of the contract, it is immaterial whether there existed other conditions, such as a delay in the mails, for which the bidder was not responsible.

While application of the provisions relating to the handling of late bids does result in the failure of the Government to receive the benefit of lower prices in some cases, such provisions are necessary to the orderly and timely procurement of supplies and services and to preserve and maintain the integrity of the formal competitive bidding system.

Accordingly, the protest is denied.

Sincerely yours,

Paul G. Dombing
For the Comptroller General
of the United States