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DECISION



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

FILE: B-199059

DATE: June 26, 1980

MATTER OF E. C. Campbell, Inc.

DIGEST:

*[Protest Alleging Improper Award
of Contract]*

Protest is untimely when only transmission received from protester was 4 days late even though that transmission included copies of telex and letter apparently sent to GAO within time limitations for filing protest, since GAO never received earlier transmissions.

E. C. Campbell, Inc. (Campbell), has filed a protest with this Office contending that the award of contract No. F02601-80-C-0016 by the Department of the Air Force to Naumann Lift Trucks, Inc., was improper. Campbell claims that it was the low bidder and that, contrary to the agency's evaluation, it was responsive to the solicitation. Resolution of this issue will not be considered because Campbell's protest was not timely filed with this Office.

Under our Bid Protest Procedures, protests must be filed not later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2) (1980). Campbell was aware of the agency's concern as to the responsiveness of its bid on May 7, 1980, and received official notice that the contract had been awarded to a higher bidder on May 12, 1980. Therefore, in order to have complied with the time requirements, Campbell had to have filed its protest with this Office by May 27, 1980. The only submission from Campbell received by this Office was time- and date-stamped here on June 2, 1980.

The June 2 submission included, among other things, a short note which confirmed a telecon of that day and copies of a telex dated May 12, 1980, and a letter dated May 13, 1980, to this Office which protested the award of the contract. However, this Office did not receive the telecon which the

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June 2 submission confirmed, nor did it receive the telex and the protest letter, even though the copies indicate that both were properly addressed. No trace of the missing submissions was found in the GAO mailroom and Western Union would not verify the existence of the telex, although it did interpret the data on the copy to indicate that if the document had been sent, it would have been mailed like a mailgram and not transmitted by computer to this Office.

The Bid Protest Procedures require that protests must be received by this Office within the time limits in order to be considered timely. 4 C.F.R. § 20.2(b)(3) (1980). The only submission received here was the June 2 letter. Thus, the protest must be considered to have been filed on June 2 for purposes of the Procedures filing requirements.

Finally, we note that the June 2 submission was sent by certified mail. Section 20.2(b)(3) of our Procedures provides for consideration of an untimely protest sent by certified mail, but only where it was sent prior to the final date for filing. This exception does not apply here, since the final date for submission was May 27 and the submission was postmarked on May 29.

For the foregoing reasons, the protest is dismissed.

Harry R. Jan Cleve
for Milton J. Socolar
General Counsel