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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Timber-Mart Southwest, Inc.

**File:** B-274677

**Date:** January 22, 1997

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Arthur M. Doughty for the protester.

Lori Polin Jones, Esq., Department of Agriculture, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest against agency's acceptance of a late bid on a timber sale is denied where the record establishes that the mailed bid was received by the agency prior to the time set for bid opening and its late delivery to the bid opening room was due to government mishandling after the bid was received.

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## DECISION

Timber-Mart Southwest, Inc. protests the acceptance of a late bid submitted by Haynes Timber Company under the Kisatchie National Forest timber sale conducted by the Forest Service, Department of Agriculture. Timber-Mart argues that Haynes' bid was delivered late and should not have been considered for award.

We deny the protest.

The timber sale was advertised as a sealed-bid sale for an estimated 3,532 hundred cubic feet (ccf) of pine small roundwood.<sup>1</sup> The advertisement specified that bids were to be submitted by 9 a.m. on Tuesday, September 10, 1996. At bid opening, three bids were opened and Timber Mart was declared the apparent high bidder with a bid of \$47.11 per ccf. Later that same day, the cognizant specialist who conducted bid opening discovered a bid package from Haynes in her mailbox. The package had no time/date stamp or notation as to the time of receipt; however, the package was postmarked September 7, and the outside envelope indicated that a bid was enclosed for the timber sale at issue and gave the correct date and time of bid opening. The Forest Service reports that the employee who, in the absence of

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<sup>1</sup>The Forest Service sells timber from National Forest System lands under the authority of the National Forest Management Act, 16 U.S.C. § 472a (1994), and implementing regulations under 36 C.F.R. Part 223 (1996).

the regular mail clerk, had received and distributed the mail on September 10 informed the specialist that no bids "of any kind" had been received in the mailroom or delivered that day.<sup>2</sup> Upon his return to work, the regular mail clerk advised the specialist that he had delivered Haynes's bid envelope to the specialist's mailbox on Monday, September 9, and confirmed his statement in writing.

After reviewing the circumstances surrounding the receipt of Haynes's bid, the contracting officer concluded that because of the agency's mishandling after receipt at the agency installation, Haynes's bid package would have been opened at bid opening on Tuesday, September 10 and considered for award. The contracting officer therefore decided to consider the bid; it was opened and Haynes was determined to be the high bidder with a bid of \$62.59 per ccf. The Forest Service then informed Timber-Mart that its bid had been supplanted by Haynes's higher bid and of the agency's intention to award the timber sale contract to Haynes. This protest followed.

The protester maintains that Haynes's bid cannot be considered by the agency since the late bid exceptions set forth at section 62 of the Forest Service Handbook do not apply here, noting that Haynes's bid package was sent by regular mail only 3 days prior to the scheduled bid opening and there was no time/date stamp by the agency which would establish whether Haynes's bid package was received on time.

A late bid generally must be rejected unless the specific conditions stated in the solicitation for consideration of late bids are met. Section 62.11 of the Forest Service Handbook, which governs the treatment of late bids on timber sales, provides that a late bid shall not be considered unless it is received before award is made, and one of the following conditions is met: (1) the bidder sent the late bid by registered or certified mail not later than the 5th calendar day before the date specified for receipt of bids or (2) the late bid was sent by mail and the contracting officer determines that the late receipt was due to mishandling by the Forest Service after receipt at the post office by the designated Forest Service installation (for example, failure to pick up or process the mail). Haynes's bid was not sent by registered or certified mail 5 days prior to bid opening and therefore the first exception does not apply. Thus, the issue here is whether the mailed bid was timely received prior to bid opening and subsequently mishandled.

The record establishing that the bid was timely received. The Forest Service has provided a signed statement from the mail clerk who placed Haynes's bid package in the cognizant specialist's box indicating that he did so the day before bid opening. Under the Forest Service Handbook, a time/date stamp is not necessary to

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<sup>2</sup>The agency has submitted signed statements from both the regular mail clerk and the "acting" mail clerk regarding the delivery of the bid package.

establish time of receipt. Accordingly, this may be established by other relevant evidence in the record, which may include statements by the protester's representatives and government personnel. See, e.g., J.C.N. Constr. Co., Inc., B-270068; B-270068.2, Feb. 6, 1996, 96-1 CPD ¶ 42; IPS Group, B-235988, Oct. 6, 1989, 89-2 CPD ¶ 327. We see no reason why the statements submitted by the agency here should not be viewed as sufficient to establish timely receipt by the agency.

Further, we think the record establishes government mishandling. Where the record shows that a bid was not received prior to bid opening due primarily to the agency's failure to establish or adhere to reasonable procedures for receiving bids, the agency's actions constitute mishandling. PLAN-Industriefahrzeug GmbH & Co. KG, 73 Comp. Gen. 67 (1993), 93-2 CPD ¶ 338. For example, we have found government mishandling where a bid did not reach the bid opening room before bid opening because the bid depository was not checked within a reasonable time prior to bid opening. Wand Elec. Inc., B-250576, Jan. 22, 1993, 93-1 CPD ¶ 59. Similarly, here, the record indicates that the specialist did not check her mailbox until mid-afternoon the day of bid opening, substantially after the bid opening. As a result of the specialist's failure to check her mailbox prior to bid opening, Haynes's bid package, which, according to the regular mail clerk, had been in the mailbox since the day before, was not taken to the scheduled bid opening. In these circumstances, the Forest Service could properly consider Haynes's bid as having been mishandled.

Accordingly, consideration of the bid for award was not improper. The protest is denied.

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