

DECISION



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

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P.L. 11
M.P. 507 247

FILE: B-196529

DATE: November 2, 1979

MATTER OF: Penco Products, Inc.

[Protest of Navy Refusal to Consider Late Bid]
DIGEST:

1. Bidder who selects other than registered or certified mail when using Postal Service to mail bid assumes risk of late delivery. Therefore, late bid sent by regular mail received day after bid opening may not be considered even though it was postmarked five days prior to bid opening.
2. Protest is summarily denied where protester's initial submission demonstrates affirmatively that protester is not entitled to relief.

AGC00001

Penco Products, Inc. (Penco) protests the United States Navy's refusal to consider its late bid under invitation for bids (IFB) No. N00189-79-B-0121. *DLG 03257*

Penco maintains that its bid was sent by regular mail and postmarked five days prior to bid opening. It believes there was ample time for the bid to be received at the procurement activity. Penco believes its bid was late because of the holiday which preceded the bid opening date.

Defense Acquisition Regulation (DAR) § 7-2002.2 (1976 ed.), provides:

"LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)

"(a) Any bid received at the office designated in the solicitation after the exact

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time specified for receipt will not be considered unless it is received before award is made and * * *:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier) * * * "

It is our view that Penco's bid was properly rejected as late. Penco's bid was not sent by registered or certified mail and was not received at the installation until the day following the bid opening. A bidder who elects other than registered or certified mail when using the Postal Service for delivery of its bid assumes the risk of late delivery. Hesse Machine & Mfg. Co., Inc., B-193984, February 23, 1979, 79-1 CPD 130. The fact that Penco's bid may have been delayed due to a Federal holiday does not relieve the protester of its responsibility to assure timely arrival of its bid. Our Office has consistently held that it is the bidder's responsibility to see that its bid is mailed in time to reach the designated office by bid opening time. Monarch Marking Systems, B-194257, March 28, 1979, 79-1 CPD 210.

We have decided this case mainly on the basis of the protester's submission because it affirmatively demonstrates that the protester is not entitled to relief. Hesse Machine & Mfg. Co., Inc., supra.

The protest is summarily denied.



Deputy Comptroller General
of the United States