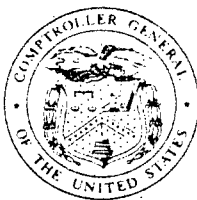


DECISION



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

FILE: B-199864

DATE: October 28, 1980

MATTER OF: Geronimo Service Company *DLG 05406*

DIGEST:

1. Protest of agency refusal to consider bid, sent by regular mail and received after due date for receipt of bids, is denied where circumstances of late delivery do not fall within any of IFB's late bids clause exceptions.
2. Bidder who selects other than registered or certified mail when using postal service to mail bid assumes risk of late delivery. Further, any failure of Postal Service to timely deliver bid does not constitute Government mishandling at Government installation.

C Geronimo Service Company (Geronimo) protests *↑* the rejection of its bid as late and the award of a contract to Space Systems International Corporation under invitation for bids (IFB) No. DAEA18-80-B-0057 issued by the Purchasing and Contracting Office, *DLG 05407* United States Army Communications Command, Fort Huachuca, Arizona, for janitorial services. Based on our review of the record, we deny the protest.

C The IFB provided that bids were to be addressed to "Purchasing and Contracting Office, U.S. Army Communications Command, Post Office Box 748, Fort Huachuca, AZ 85613." Bid opening was scheduled for 10 a.m. on August 4, 1980. Geronimo's bid was sent by regular mail on August 1, 1980, and the time/date stamp on the bid envelope indicates that it was received at the Purchasing and Contracting Office on August 4, 1980, at 10:55 a.m. Therefore, the contracting officer advised Geronimo that pursuant to

[Protest Against Bid Rejection and Contract Award]

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paragraph C. 20 of the IFB entitled "Late Bids, Modifications of Bids or Withdrawal of Bids (1979 Mar)," quoted below, its bid could not be considered for award.

Geronimo contends that its bid was at the United States Post Office in Fort Huachuca early enough on August 4, 1980, to be placed in Post Office Box 748 by 10 a.m. Therefore, Geronimo contends that its bid should be considered for award.

Analysis

The IFB's late bids clause provides in pertinent part:

"LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 Mar)

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

"(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): or,

"(ii) it was sent by mail (or telegram if authorized) and 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 clause further provides that the only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other

documentary evidence of receipt maintained by the installation.

(We have long held that a bidder is charged with the responsibility of insuring that its bid arrives on the proper date and time, and that by choosing methods of delivery other than those specified in the late bids clause, a bidder assumes the risk of late delivery. See Hesse Machine & Mfg., Co. Inc., B-193984, February 23, 1979, 79-1 CPD 130.

The record does not support Geronimo's contention that its bid was timely received as is shown in the following statements: (1) the Chief, Contract Support, Fort Huachuca, states that Post Office Box 748 was checked on August 4, 1980, at approximately 9:30 a.m. in accordance with its regular routine pickup and that Geronimo's bid would have been picked up at that time if it had been in Post Office Box 748; and (2) the Post Office Station Manager states that the actual boxing of mail starts about 9 a.m. on a normal day and is completed by 10 a.m.; however, on August 4, 1980, the Post Office was two distributors short and, therefore, did not begin boxing until after 10 a.m. Based on the Station Manager's advice, the Army concludes that Geronimo's bid was not in the Purchasing and Contracting Office's Post Office Box 748 by 10 a.m. on August 4, 1980.

In our opinion, Geronimo's bid was properly rejected as late because the evidence does not show that the bid was in Post Office Box 748 by 10 a.m. on August 4, 1980. The bid had to be there by the time stated to constitute timely delivery. The bid was not in the Army installation's custody until delivery of the bid was made by the Post Office by placing the bid in Post Office Box 748 after 10 a.m. and, therefore, the Army could not be charged with mishandling.

Geronimo argues that had the station not been "two distributors short" on August 4, 1980, its bid would have been timely received. (Nevertheless, under the late bids clause the only Postal Service

delay which may constitute an acceptable excuse for late receipt is under provision (a)(i), above, which allows consideration of a late bid if it was sent by registered or certified mail (not the case with Geronimo's bid) 5 calendar days before bid opening. The word "Government" as used in provision (a)(ii) of the clause refers to the procuring installation--not the Postal Service. See, for example, Hughes Industries, B-195048, June 19, 1979, 79-1 CPD 441.

Under the circumstances, the contracting officer's refusal to consider Geronimo's late bid was proper; therefore, its protest is denied.

A handwritten signature in dark ink, reading "Milton J. Aocular". The signature is fluid and cursive, with a large, stylized initial "M".

Acting Comptroller General
of the United States