

DECISION



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

FILE: B-199242

DATE: November 24, 1980

MATTER OF: N.Y. Enterprise Capital Corp.

DIGEST:

[Protest of Bid Rejection for Lateness]

While protester had certified mail receipt postmarked by Postal Service, envelope containing protester's late bid did not have required U.S. Postal Service postmark indicating that it had been mailed at least 5 days before bid opening date. Therefore, bid did not comply with IFB requirements and agency was entitled to reject bid as late.

N.Y. Enterprise Capital Corp. (Enterprise) has protested the refusal by the Federal Supply Service (FSS) of the General Services Administration to accept its late bid for invitation for bids (IFB) No. 5FCB-13-80-035. Enterprise would have been the low bidder for certain items.)

Bid opening was 3:30 p.m., April 30, 1980. Enterprise claims it mailed its bid on April 23, 1980, using certified mail and that its employee asked the postal clerk to postmark both its receipt and the envelope containing the bid. There was a postage meter impression made by Enterprise's postage machine already upon the envelope. The clerk postmarked and returned the receipt but did not postmark the envelope.)

Enterprise's bid arrived at FSS offices on May 5, 1980, and FSS informed Enterprise its bid was late. However, upon Enterprise's submission of the receipt, postmarked April 23, 1980, FSS concluded that Enterprise's bid was acceptable. Another bidder protested FSS's ruling and, upon reconsideration, FSS concluded that Enterprise had not met the "late bid" requirement of article 7 of standard form 33-A which had been included in the IFB. Once again, Enterprise's bid was ruled late.

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The IFB provided that late bids sent by registered or certified mail were acceptable if sent at least 5 days before bid opening. Further, the IFB stated:

"The only acceptable evidence to establish:

"The date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term 'postmark' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye 'postmark' on both the receipt and envelope or wrapper.)" (Emphasis supplied.)

Enterprise maintains that under the "Certified Mail" procedures of the United States Postal Service, its bid envelope was placed in the mail on April 23, 1980, the date postmarked on its certified mail receipt. Section 912.7 of the Postal Service's Domestic Mail Manual (Issue 2, 5-15-80) instructs the postal clerk to verify names, addresses, delivery instructions, and postal charges before giving the mailer a postmarked receipt and concludes--

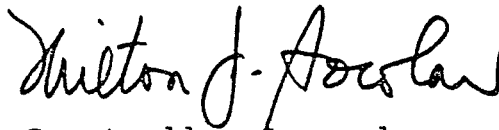
"Deposit article in mail. Do not return to the mailer."

The requirement for a postmark on both the receipt and the envelope was added to the late bid clause by amendment 193 to the Federal Procurement Regulations dated July 6, 1978, and that amendment contained the following rationale for the requirement:

"While certified mail service provides a receipt to the sender and a record of delivery at the office of address, no record is kept at the office at which it was mailed. (Consequently, when metered postage is used, the only evidence establishing the date of mailing is the postmark on the certified mail receipt. Because the U.S. Postal Service cannot substantiate that the certified bid envelope was actually deposited in the mail on the date shown on the postmarked receipt, it is questionable that the postmarked certified mail receipt under these circumstances is a reliable indication of the actual date of mailing." (Emphasis supplied.)

While Enterprise argues that this new requirement for a postmark on both the receipt and envelope is unnecessary, in view of the Postal Service requirement that the item being mailed should not be returned to the mailer, we find this position to be without merit. The solicitation instructions are clear and reflect the requirement in the FPR's. We see no basis for waiving the IFB requirement even though the Postal Service manual provides that the postal clerk shall not return the mail to the sender since, in the absence of the postmark on the envelope, there is no evidence that the mail was deposited on the date stamped on the receipt held by the sender.

(The protest is denied.)



For the Comptroller General
of the United States