

DECISION



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

FILE: B-203002

DATE: June 8, 1981

MATTER OF: Aetna Supply, Inc.

DIGEST:

1. Protester's late bid was properly rejected by agency notwithstanding mailing of bid by U.S. Postal Service express mail since if bidder uses express mail rather than certified or registered mail it assumes risk of late delivery.
2. Only acceptable evidence to establish time of receipt by Government installation is time/date stamp of installation on bid wrapper or documentary evidence maintained by installation. Even if initials of Postal Service and agency employee on bid wrapper meet this standard, bid was properly rejected as bid received in mailroom of Government installation at time of bid opening could not realistically reach designated office within the installation prior to bid opening even in absence of any mishandling by Government personnel.

Aetna Supply, Inc. protests the rejection of its bid as late by the Environmental Protection Agency (EPA) under invitation for bids C1 81-E 027. Aetna maintains that its bid was received at the Government installation at the time set for bid opening and, alternatively, that if it was late the lateness was due to mishandling between the mailroom and the procurement office at the Government installation.

The IFB was issued on March 18, 1981, with a scheduled bid opening time of 2:00 p.m. on April 17. Aetna sent its bid to EPA on April 16 via United States Postal Service express mail. According to the agency, Aetna's bid was not

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received in the EPA procurement office until 2:02 p.m. on April 17. The contracting officer rejected the bid as late.

It is clear from Aetna's initial submission that this protest is without legal merit. Therefore we are deciding the matter without further case development. Walker's Royal, Incorporated, B-200583, October 20, 1980, 80-2 CPD 301.

The protester first seems to argue that since its bid was transmitted by express mail it should be considered even if late. Aetna did not mail its bid by either certified or registered mail, which is a prerequisite to its consideration in the event of late receipt under paragraph (a)(1) of the "Late Bid" clause in the solicitation. In this regard, it is the bidder's responsibility to see that its bid is mailed in time to reach the designated office by opening time; and we have specifically held that a bidder who elects to use express mail rather than registered or certified mail when using the Postal Service for delivery of its bid assumes the risk of late delivery. Enrico Roman, Inc., B-196350, January 21, 1980, 80-1 CPD 61.

Next Aetna argues that its bid was not in fact late because it was received in the EPA mailroom at the 2:00 p.m. time set for bid opening and that the delay which resulted in the bid being stamped received in the procurement office at 2:02 p.m. was the result of Government mishandling. Paragraph (a)(2) of the "Late Bid" clause provides that a late bid may be considered if it is determined that the late receipt in the procurement office was due solely to Government mishandling after receipt at the installation.

Before we can consider the question of mishandling, the time of receipt at the Government installation prior to bid opening must be established. Monitor Northwest Company, B-193357, June 19, 1979, 79-1 CPD 437. The only evidence acceptable to establish the time of receipt at the Government installation under the "Late Bid" clause is the installation's time/date stamp on the bid wrapper

or other documentary evidence maintained by the installation. Skip Kirchdorfer, Inc., B-199628, November 28, 1980, 80-2 CPD 401.

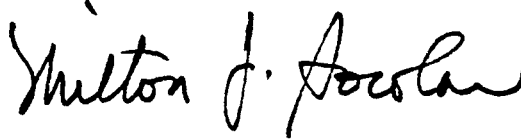
Here, evidence that the bid was received at the EPA mailroom at 2:00 p.m. consists of a handwritten notation made by the Postal Service employee delivering the bid on the express mail address form on the bid, as well as initials by an EPA employee on that same form.

While it is not clear whether the EPA employee's initials were intended to verify the time of receipt in the mailroom, even if it could be clearly shown that Aetna's bid was received in the mailroom at the time of bid opening it is unrealistic that such a document could have reached its ultimate destination instantaneously after its receipt at the Government installation even in the absence of any mishandling by Government personnel. After being received in the mailroom, the bid package was taken immediately to the procurement office where it was time/date stamped at 2:02 p.m. Since the procurement office was located two floors above the mailroom, two minutes delivery time is not evidence of mishandling. See Monitor Northwest Company, supra.

Furthermore, regarding the protester's contention that mailroom employees should have informed procurement personnel upon receipt of Aetna's bid, the lack of telephone communication between the mailroom and the bid opening room upon receipt of Aetna's bid is not evidence of mishandling. The contracting officer telephoned the mailroom at 1:55 p.m. to see if any other bids had been received and was told none had. Aetna's suggestion that the contracting officer should have telephoned the mailroom at 2:00 p.m. would have resulted in delay of the bid opening. This would clearly have been improper as the solicitation specifically states that any bid which arrives at the Office designated in the solicitation after the exact time specified will not be considered unless the criteria in the "Late Bid" clause are met. Here, if the bid arrived at the mailroom at 2:00 p.m. it is clear that it would have had to arrive at the designated procurement office after that time. Further, as shown above, the criteria for consideration of a late bid pursuant to the

"Late Bid" clause were not met. Our Office has consistently held that the bidder has the responsibility to assure timely arrival of its bid and must bear the responsibility for its late arrival. We have often approved the rejection of bids only a few minutes late. See Monitor Northwest Company, supra.

The protest is summarily denied.

A handwritten signature in dark ink, reading "Milton J. Aroslan". The signature is fluid and cursive, with the first name "Milton" being the most prominent part.

Acting Comptroller General
of the United States