

DECISION



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

FILE: B-207791

DATE: June 21, 1982

MATTER OF: Sigma Treatment Systems

DIGEST:

1. Where a delay in the delivery of a bid is due to adverse weather conditions and not Government mishandling after receipt at the contracting installation, bid mailed two days before bid opening must be rejected as late notwithstanding protester's use of Express Mail with guaranteed 24-hour delivery. ✓
2. A bidder bears the risk of non-receipt or delay in receipt of solicitations absent substantive proof that the agency deliberately attempted to exclude the bidder from participating in the procurement.

Sigma Treatment Systems' protests the rejection of its proposal to provide 11 Oily Water Separator Units under Invitation for Bids (IFB) NASO-82-00157 issued by the National Oceanographic and Atmospheric Administration (NOAA), Department of Commerce. The protester admits that its bid was received late but says it should be considered because it was sent two days before bid opening by Express Mail with guaranteed 24-hour delivery. According to Sigma, the Postal Service was unable to meet its commitment because of an Act of God--fog in Chicago--which delayed aircraft operations. Sigma also states it was delayed in preparing its bid because NOAA failed to include it on its bidders' list, even though Sigma had properly completed and submitted a Bidders Mailing List Application for NOAA. According to Sigma, NOAA's failure to place its name on its bidders' list and the Postal Service's failure to provide the 24-hour service it guaranteed are the direct causes for late receipt.

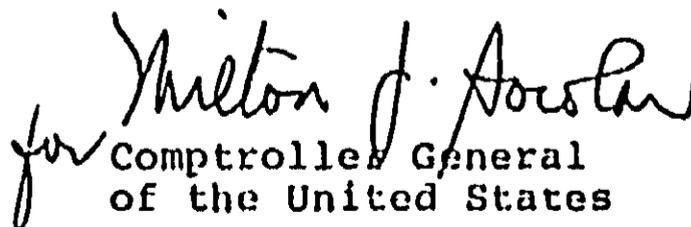
Consideration of Sigma's bid under the circumstances described would not be proper. Our Office has consistently held that it is the bidder's responsibility to assure timely receipt of its bid and that

the bidder must bear the responsibility of its late arrival unless the specific conditions of the solicitation for consideration of late bids are met. Gross Engineering Company, B-193953, February 23, 1979, 79-1 CPD 129. Severe weather is not one of these conditions. Devoe & Reynolds Company, B-197457, February 7, 1980, 80-1 CPD 111. These rules permit the consideration of late bids which were sent at least five days prior to bid opening by certified or registered mail or where the sole or paramount cause of delay is Government mishandling after receipt at the Government installation. Federal Procurement Regulations § 1-2.201(a)(31) (1964 ed.). Receipt by the Postal Service is not receipt at the Government installation, Express Mail is not the equivalent of registered or certified mail, and in any event, Sigma mailed its bid two rather than five days before bid opening. Its bid is not, therefore, entitled to consideration. Berc Inc., B-202615, April 22, 1981, 81-1 CPD 313.

Further, regarding NOAA's alleged failure to initially include Sigma on its bidders' list, the Government is not an insurer of the delivery of bid documents and would not have been required to set aside the results of its solicitation had Sigma never received the bid package. G & H Aircraft, B-189264, October 28, 1977, 77-2 CPD 329. Thus, the bidder bears the risk of non-receipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude the bidder from participating in the procurement. Polytech, Incorporated, B-199770, January 7, 1981, 81-1 CPD 14.

Sigma has not even alleged that the agency deliberately sought to exclude it from participation, and, in any event, the delay in the receipt of its bid was not due to any actions taken by the agency.

The protest is summarily denied.

for 
Comptroller General
of the United States