

Mars PL # 24125

DECISION



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

FILE: B-208146

DATE: January 24, 1983

MATTER OF: Sun International

DIGEST:

Contracting officer's acceptance of a late bid was proper where the failure of agency personnel to follow the established procedures for receipt of express mail on week-ends was the paramount cause of the late receipt.

Sun International protests the Veterans Administration's (VA) award of a contract to Coleman Newland Construction under invitation for bids (IFB) No. 605-79-82 for the installation of sun screens at the Jerry L. Pettis Memorial Veterans' Hospital. The protester contends that the contracting officer's acceptance of Coleman Newland's bid was improper because the bid was received late. We deny the protest.

The IFB provided that bids would be received at the Office of Chief, Supply Service, until Monday, June 28, 1982, at 10:00 a.m. Coleman Newland's bid was sent by United States Postal Service express mail on June 25. A Postal Service carrier attempted to deliver the bid on Saturday, June 26, when the Supply Service is closed. The security guard on duty refused to accept the bid. The carrier left, and did not return with the package until 12:20 p.m. on June 28, more than 2 hours after bid opening.

The contracting officer determined that the security guard's refusal to accept Coleman Newland's bid on Saturday constituted mishandling by the Government. He therefore concluded that the bid could be accepted under the "Late Bids, Modification of Bids, or Withdrawal of Bids" clause in the IFB. In pertinent part, the clause provided:

"(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 * * *:

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"(2) 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."

In its report to this Office, however, the VA agrees with the protester's contention that the contracting officer improperly accepted the late bid.

We believe that the contracting officer was in error in determining that Coleman Newland's bid could be accepted under the "Late Bids" clause contained in the solicitation. As quoted above, that clause permits the acceptance of mailed bids which are late due to mishandling after receipt at the Government installation. In order for mishandling after receipt to occur, however, the Government first must have physical possession of the bid. See Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD 331. That was not the case here since the security guard refused to accept delivery of the bid.

Nevertheless, we have held that a strict and literal application of the late bid regulations should not be utilized to reject a bid where to do so would contravene the intent and spirit of those regulations. Hydro Fitting Mfg. Corp., supra. The regulations are intended to insure that late bids will not be considered if there exists any possibility that the late bidder would gain an unfair advantage over other bidders, not to give one bidder a wholly unmerited advantage over another by over-technical application of the rules in circumstances not contemplated by those rules. Id. Thus, we have found that a bid received after bid opening may be considered where there was Government mishandling in the process of receipt (as opposed to after receipt) that is the paramount cause of the bid being late. CWC, Inc., B-204445, December 15, 1981, 81-2 CPD 475.

The VA takes the position that the security guard's refusal to accept delivery of Coleman Newland's bid did not constitute Government mishandling. In support of this conclusion, the VA refers to our decision in Ferrotherm Company, B-203288, September 1, 1981, 81-2 CPD 194.

In Ferrotherm, a bid was sent by Federal Express and delivered to a military installation on a weekend, when the installation was closed. The military officer and security guard on duty at the time did not recognize the addressee and asked the courier if he could return on Monday, during normal business hours. The courier agreed to do so, but did not return until 10:22 a.m. on Monday. Since bid opening was at 10:00 a.m., the contracting officer rejected the bid as late.

We found this action proper since it could not be shown that wrongful action by the Government was the sole or paramount cause for the late receipt, the only circumstance under which a late hand-carried bid may be accepted. We noted that contrary to the protester's contention, the duty officer and the security guard were not authorized representatives of the contracting officer, and that the original attempted delivery was not made during normal business hours. We found nothing unreasonable in the agency's failure to provide for receipt of hand-carried bids outside normal working hours.

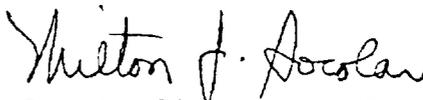
Nonetheless, we have also recognized that the Government has an obligation to establish and implement procedures for the timely receipt of bids, and have held that a late bid should be considered where the lack of such procedures is the paramount cause of the late receipt. Federal Contracting Corporation, 56 Comp. Gen. 737 (1977), 77-1 CPD 444. Thus, we have found the rejection of a late mailed bid improper where the agency had a policy against the acceptance of special delivery mail on weekends but had established no procedures for the timely receipt of such bids prior to a Monday bid opening. Id.

In this case, we are advised that the hospital does have established procedures for the receipt of express mail on weekends. The contracting officer states that when the

Postal Service delivers express mail on a weekend, the hospital switchboard operators are authorized to receive it. The mail is taken to the central mailroom at 8:00 a.m. on Monday--in time to reach the Office of the Chief, Supply Service with the morning mail, which is delivered there at approximately 9:00 a.m. The procedures were not followed in this case, apparently either due to an error on the security guard's part or because he was unaware of the procedures.

Had the established procedures been followed here, Coleman Newland's bid should have been received prior to bid opening. Therefore, we believe that Government mishandling in the process of the receipt of Coleman Newland's bid was the paramount cause for its late receipt. We also note that acceptance of Coleman Newland's bid did not result in any unfair competitive advantage since the bid was out of the bidder's hands and in the custody of the Postal Service at the time of bid opening. See CWC, Inc., supra.

Accordingly, we conclude that the contracting officer acted reasonably in accepting Coleman Newland's bid. The protest is denied.

for 
Comptroller General
of the United States