

DECISION

24728

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

FILE: B-210585.2 **DATE:** April 5, 1983
MATTER OF: McKinney Bedding Co.--Reconsideration

DIGEST:

1. Prior decision that a protest alleging that the contracting agency denied the protester an opportunity to compete was untimely because it was filed more than 3 months after the protester learned the basis of its protest is affirmed.
2. An agency may consider a bid received after bid opening only if the bid was sent by registered or certified mail 5 calendar days before bid opening or the bid was received late due solely to Government mishandling. A bid submitted after bid opening may not be considered in any case.

McKinney Bedding Company requests that we reconsider our decision McKinney Bedding Company, B-210585, February 7, 1983, 83-1 CPD ___. In that decision, we dismissed as untimely McKinney's protest that the General Services Administration (GSA) prevented McKinney from competing for a contract under invitation for bids No. FNPS-S5-1235-N-6-11-82. McKinney pointed out that GSA did not provide it a copy of the solicitation even though it submitted a bid under a previous solicitation and alleged that GSA incorrectly synopsisized the requirement in the Commerce Business Daily. We found the protest to be untimely because McKinney learned of the bases of protest in September 1982, but did not file a protest until January 24, 1983. Our Bid Protest Procedures require protests to be filed within 10 working days of the time the protester learns of its basis for protest. 4 C.F.R. § 21.2(b)(2) (1982).

McKinney now contends that in addition to the bases of protest noted above, its initial protest contained a third basis, the rejection of a bid it submitted nearly 4 months after the June 11, 1982, bid opening. McKinney claims that

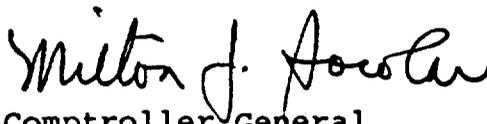
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a GSA official indicated that the late bid might be considered in view of McKinney's lack of opportunity to submit a bid prior to bid opening. McKinney claims that it did not learn of the rejection until January 10 and, therefore, the protest filed on January 24, 1983 was timely as to the bid rejection basis.

We believe that our initial determination that the protest was untimely was correct. McKinney's contention that its late bid should be accepted by GSA is so intertwined with its claim that it was unfairly denied an opportunity to compete for the contract that, in our view, it does not constitute a separate and independent basis of protest. Rather, we regard the acceptance of the late bid as the relief requested for the alleged denial of an opportunity to compete. Under the circumstances, we believe we properly declined to consider the merits of the protest since it was filed 4 months after the basis of protest (denial of an opportunity to compete) was learned.

We point out that even if we found the contention that GSA improperly rejected the late bid to an independent and timely-filed basis of protest, the contention clearly lacks merit. Bids were opened on June 11 and McKinney submitted a bid in October. The Federal Procurement Regulations (FPR) permit the consideration of late bids only if the bid is sent by registered or certified mail 5 calendar days before opening or if a mailed or telegraphed bid is received late due solely to the Government's mishandling after receipt at the installation. FPR § 1-2.303 (1964 ed.). The regulations do not contemplate the consideration of a bid submitted after the field of competition has been defined as of bid opening. See Harris Corporation, PRD Electronics Division, B-209154, October 13, 1982, 82-2 CPD 332. Since McKinney's late bid does not fall within either exception to the rule against considering late bids, GSA had no authority to accept the bid and its rejection of the bid was proper.

We affirm our initial decision.

for 
Comptroller General
of the United States