

DECISION



28651

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

FILE: B-215019

DATE: June 28, 1984

MATTER OF: Building Maintenance Specialists, Inc.

DIGEST:

Bid delivered by Express Mail 4 hours before bid opening to agency's main post office, rather than to the bid opening room to which it was addressed, but in an envelope not identified as containing a bid as required by the solicitation, was properly rejected when it arrived late at the bid opening room because improper government handling was not the paramount cause of the late receipt.

Building Maintenance Specialists, Inc. (BMS) protests the rejection of its bid for ground maintenance by the National Institutes of Health (NIH), Department of Health & Human Services under invitation for bids (IFB) No. 263-84-B(64)-0069. BMS's bid was rejected because it was not received in the bid opening room until after the time set for bid opening. BMS contends that its price was low and its bid was received late at the bid opening room only because of mishandling by the agency after the bid was received by the agency 4 hours before the bid opening time.

The IFB provided that bid opening time would be 3:00 p.m. on April 16, 1984. An attachment to the IFB called attention to the standard late bid provision in the IFB and stated that the lower left-hand corner of the envelope "must" list the IFB number and the date and time of bid opening. The agency states that if these instructions are followed, under its procedures a properly marked envelope is placed in a bid box in the NIH post office and the procurement office is immediately notified by telephone to pick the bid up.

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RMS's bid was sent by Express Mail on April 14, and it was received at the main post office of the agency at 11:00 a.m. on April 16. Although the envelope was properly addressed to the office designated in the IFR for receipt of bids, it did not contain the identifying information on the outside of the envelope. Thus, it was placed in the regular mail system at 11:30 a.m. for afternoon delivery and reached the central mail point for the procurement office at 3:12 p.m. The envelope was then sent to the designated office where it was received at 3:20 p.m., but it was not opened and found to contain a bid until just before 5:02 p.m., at which time it was rejected as late.

RMS contends that the package was mishandled first by the Postal Service employee who did not deliver it to the office to which it was addressed and then by the mail clerk in the installation's central mail room who did not insure its timely delivery to the bid opening room. RMS argues that the employee of the Postal Service and the agency's mail clerk are both government employees and that their mishandling constitute mishandling by the government.

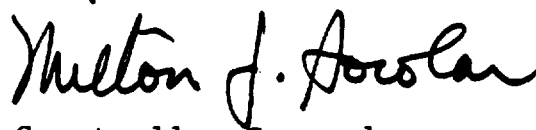
RMS's bid was properly rejected because it was not received at the office designated in the solicitation by the time specified in the IFR. See Future Tech, R-210601, March 1, 1983, 83-1 CPD ¶ 217. The standard "late bid" clause incorporated in this IFR permits consideration of a late bid only if the bid was sent by certified or registered mail not later than 5 days prior to bid opening or was sent by mail (or telegram if authorized) and it is determined that the late receipt was due solely to mishandling by the procuring agency after receipt. Lloyd S. Hockema, Inc., R-199682, Nov. 12, 1980, 80-2 CPD ¶ 356. Neither of these exceptions can be applied here.

The first exception is not applicable because Express Mail is not considered certified or registered mail for purposes of this exception. Walter's Royal, Incorporated, R-200583, Oct. 20, 1980, 80-2 CPD ¶ 301. The second exception also cannot be applied. The fact that the Postal

B-215019

Service employee did not deliver the package to the office to which it was addressed does not bring the situation within the scope of the government mishandling exception because the word "government" as used in this exception refers to the procuring agency, not to the Postal Service. Minority Business Enterprises, Inc., B-211836, May 31, 1983, 83-1 CPD ¶ 583. There is also no evidence that the agency's mail personnel mishandled the bid after its receipt. BMS did not follow the IFB instruction to state on the envelope that it contained a bid with the bid number and the date and time of bid opening. Therefore, the mail clerk had no reason to treat it as other than regular mail.

The protest is denied.



Acting Comptroller General
of the United States