

**DECISION**

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

**FILE:** B-221551 **DATE:** April 2, 1986  
**MATTER OF:** Nuairé, Inc.

**DIGEST:**

1. Where offer arrives late in the designated office, to be considered acceptable, it must have been received in the post office box mailing address before the opening time and the late receipt must have been due "solely" to mishandling by the government. Record indicates that the offer was delivered to post office box the day after opening and, thus, there is no basis to conclude that offer was late solely due to mishandling by the government.
2. The timely arrival of awardee's offer, which apparently was sent a day later than the protester's untimely offer, does not indicate any impropriety in the agency's handling of offers. Simply, the awardee, unlike the protester, which sent its offer to the mailing address, chose to hand deliver its offer to the opening site to ensure timely delivery.
3. Firm that submitted an offer that was rejected properly for arriving late is not an "interested party" qualified to protest award to the lowest of the remaining offerors.

Nuairé, Inc. (Nuairé), protests the rejection of its offer submitted in response to solicitation No. 648-16-86<sup>1/</sup> issued by the Veterans Administration (VA). Nuairé's offer was rejected because it was late.

We deny the protest in part and dismiss the protest in part.

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<sup>1/</sup> The solicitation designates the procurement document as a request for proposals, but the VA conducted this procurement under sealed bid procedures without any objection from the offerors.

The solicitation sought offers for biohazard hoods. Item 9 of the solicitation provided that sealed offers would be received at the place specified in item 8, or, if handcarried, in the depository listed in Building T-2280, Vancouver Division, Fourth Plain & St. Johns, Vancouver, Washington, until 3 p.m., December 12, 1985. Item 8, which reads "Address Offer To (If other than Item 7)," was left blank. Item 7, captioned "Issued By," listed the following address:

"Chief, Supply Service  
VA Medical Center 648/90F  
P.O. Box 1035  
Portland, OR 97207"

Three offers were received prior to opening time at 3 p.m. on December 12, 1985. However, the VA did not receive Nuaire's offer until the following day, December 13. The record indicates that Nuaire sent its offer by Express Mail on December 10, 1985, to the address indicated in item 7 of the solicitation, which was the address for mailed offers, and that it arrived at the post office sometime on December 12, 1985. Nuaire's postal receipt indicates that delivery was first attempted at 7 a.m. on December 12, 1985, but Nuaire's offer was not actually placed in the VA's post office box until 6:45 a.m. on December 13, 1985, and was not delivered to the opening room until 1:41 p.m., December 13, 1985.

Nuaire states that it basically agrees with the facts stated above, but asserts that the VA has failed to address its contention that the use of a post office box as the designated mailing address was improper given that there were only 11 working days from solicitation issuance to opening, and that the use of the post office box meant relying on the agency to pick up the offer timely. Nuaire argues that the VA should have provided the address of the contracting officer so that its offer could have been sent directly to the VA.

Nuaire also raises two additional issues based on its examination of the awardee's offer contained in the VA's report in response to the protest. First, Nuaire points out that the awardee's offer, which apparently was sent a day later than Nuaire's offer, arrived on time, but was delivered to the VA local office, and not to the post office box. This suggests to Nuaire that Nuaire also should have been permitted to send its offer directly to the VA and that it may have received unfair treatment. Nuaire also argues that the awardee's offer is nonresponsive because it

may have received unfair treatment. Nuaire also argues that the awardee's offer is nonresponsive because it did not meet the requirement for a hinged view screen; instead, the offer on its face proposes to supply a sliding view screen.

Initially, we note that the VA discusses in some detail the late submissions clause set forth in section 52.214-7 of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-7 (1984), and incorporated into the solicitation by item 9 of the solicitation. This provision states that a late offer will not be considered unless it was received prior to award and (1) it was sent by registered or certified mail at least 5 days prior to the opening, or (2) the late receipt was due solely to government mishandling after receipt at the government installation.

Concerning the first exception, under 48 C.F.R. § 52.214-7, Express Mail is not considered certified or registered mail for the purposes of this exception, Building Maintenance Specialists, B-215019, June 28, 1984, 84-1 C.P.D. ¶ 690, and, in any event, Nuaire's offer was mailed on December 10, 1985, only 2 days prior to the opening date. Concerning the second exception, Nuaire does not allege that the late receipt of its offer was due solely to government mishandling after receipt at the government installation. In this connection, we have held that "government installation" within the context of the "late bid" clause means the local agency office, not the agency's post office box. See Retsina Co., B-212471, Aug. 3, 1984, 84-2 C.P.D. ¶ 148; The Hoedads, B-185919, July 8, 1976, 76-2 C.P.D. ¶ 21. Therefore, the second exception is not applicable since Nuaire's offer was already late when it arrived at the local VA office.

With regard to Nuaire's contention that the use of a post office box address is not a legitimate mailing address for a solicitation and, in effect, that the designation and use of a post office box is the primary reason Nuaire's offer was late, we think Nuaire's concern about the use of the box is untimely. The solicitation clearly indicated the box address, and, if Nuaire objected to it, the company should have protested prior to opening. 4 C.F.R. § 21.2(a)(1) (1985). In any event, we have not objected to the use of a post office box as a mailing address for submission of an offer. See, for example, Retsina Co., B-212471, supra. We have stated in this connection that, where a solicitation provides that offers may be mailed to a post office box, we view that box as an

intermediate stop in transit, see 49 Comp. Gen. 697 (1970), since the ultimate destination of an offer is the place of opening, and, unless otherwise provided, offers are not opened in the post office. Honig Industrial Diamond Wheel, Inc., B-214201, July 10, 1984, 84-2 C.P.D. ¶ 37.

We also have recognized that there may be situations similar to this one that may justify consideration of a late offer. For example, where a protester can show that government mishandling during the process of receipt (as distinguished from mishandling after receipt) was the paramount reason its offer was late, the offer may be considered. Sun International, B-208146, Jan. 24, 1983, 83-1 C.P.D. ¶ 78. Government mishandling of an offer delivered to a post office box may be found where the agency fails to employ procedures designed to permit timely delivery of the offer to the contracting officer within a reasonable time before opening. 49 Comp. Gen. 697, supra. In order to conclude, however, that an offer delivered to a post office box was late solely because of government mishandling, it first must be established that the offer--or at least some notice concerning it--was in the box sometime prior to the time for opening of offers. See Utah Geophysical Inc., B-209503, Mar. 22, 1983, 83-1 C.P.D. ¶ 288.

Here, the record does not establish that the offer or notice of it was in the box prior to the time for opening of offers. The facts which are not disputed are that the offer may have arrived at the post office on December 12, 1985, but that the first notice of the offer the VA received was when it received the package in its post office box at 6:45 a.m. on December 13. Thus, since the offer was delivered late to the VA's post office box, we need not consider whether the offer was otherwise mishandled by the government. Retsina Co., B-212471, supra. We find that the VA properly rejected Nuairé's offer as late.

Nuairé also implies possible government mishandling based on its review of the awardee's offer. Nuairé points out that the awardee sent its offer to a different address than the block 7 mailing address. Nuairé also notes that the awardee's offer was signed by the offeror a day later than Nuairé's offer was signed and mailed, yet that offer arrived timely, and that Nuairé's offer, mailed a day earlier, arrived late. It appears that the awardee's offer was not sent by mail (as in Nuairé's case), but apparently was hand-delivered to the depository for hand delivered offers designated in the solicitation since there is no evidence of its having gone through the mail. Thus, the fact that the awardee's offer arrived timely, but

Nuaire's offer did not, can be explained by the offerors' choice of different methods of delivery, and does not indicate government mishandling of Nuaire's offer.

Nuaire also asserts that the awardee's offer is nonresponsive because it does not meet the solicitation requirement for a hinged view screen. However, we need not address this issue since Nuaire is not eligible for award because it submitted a late offer. We will not consider a party's interest to be sufficient to complain about acceptance of another firm's offer under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985), where the party would not be eligible for award (there were a number of other offerors under the solicitation), even if the issues raised were resolved in its favor. Systems Engineering, Inc., B-215915, Sept. 28, 1984, 84-2 C.P.D. ¶ 366; Diesel Energy Systems Co., B-215385, Aug. 14, 1984, 84-2 C.P.D. ¶ 177.

We deny the protest in part and dismiss it in part.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel