

Hilton



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Systems for Business

File: B-224409

Date: August 6, 1986

DIGEST

1. Contracting agency properly rejects a proposal sent via U.S. Postal Service Express Mail on the day before the date for receipt, but received late at the location designated in the solicitation. Although next-day delivery was guaranteed, the regulation permitting consideration of late proposals applies only to those sent by registered or certified mail 5 days before the date for receipt.
2. Protester generally must establish the timely receipt of a bid or proposal at the government installation before the General Accounting Office will consider alleged mishandling.
3. Delay in Express Mail delivery by U.S. Postal Service is not mishandling by the government, since the regulations covering late bids and proposals apply only to mishandling after receipt at the government installation. Moreover, the offeror has contributed to the delay if the Express Mail envelope is not clearly marked with information as to the solicitation number, deadline for receipt, and ultimate destination of the proposal.

DECISION

Systems for Business protests the rejection as late of its proposal for converting microfilmed information to machine readable codes by the Department of Commerce, National Bureau of Standards. Systems for Business offered the proposal in response to solicitation number SB86NBS0052. We dismiss the protest.

Systems for Business states that it mailed its proposal from the San Francisco airport via U.S. Postal Service Express Mail at 2:15 p.m. on Sunday, June 15, 1986. However, it was not delivered to the proper location within the National Bureau of Standards at Gaithersburg, Maryland by the time set for receipt of offers, 3 p.m. on Monday, June 16. The contracting officer therefore declined to open it. Systems for Business argues that late proposals sent by Express Mail 1 day before the day set for receipt, with next-day delivery guaranteed, should be accepted in the same manner as late proposals that are sent by registered or certified mail 5 days before the date set for receipt.

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We find that the agency properly rejected the Systems for Business proposal. In accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.407(c)(6) (1985), the solicitation incorporated by reference the standard clause on late proposals, 48 C.F.R. § 52.215-10. The clause provides that late proposals will be accepted only if they were sent by registered or certified mail at least 5 days before the date for receipt. Late proposals sent by ordinary mail may be accepted if the government determines that the delay in receipt results solely from mishandling by the government after delivery to the contracting agency, Id., or if the paramount cause of the delay was mishandling in the process of delivery. See Data Monitor Systems, Inc., B-220917, Jan. 23, 1986, 86-1 CPD ¶ 82.

Systems for Business questions the application of this rule to its proposal because the full text of the late proposal clause was not set out in the solicitation. Late proposal provisions incorporated into a solicitation by reference are binding, however, and offerors are charged with constructive knowledge of their contents. Rally Racks, Division of Rally Enterprises, Inc.--Reconsideration, B-200159.2, Oct. 30, 1980, 80-2 CPD ¶ 330. We also note that the solicitation here stated that copies of incorporated clauses would be supplied on request, so we are not swayed by the protester's argument that it was not aware of any preferred method of delivery.

Moreover, an offeror is responsible for delivering its bid or proposal to the proper place at the proper time. Late submissions may be considered only as provided for in the solicitation. K.L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79. Systems for Business has not satisfied the conditions of the solicitation here, since it elected to use Express Mail, rather than registered or certified mail. Primarily because Express Mail service is not available to bidders and offerors in all parts of the country, we have held that its use does not fall within the exception permitting consideration under the FAR late proposals clause. See Olympic Mills Corp., B-218218, Mar. 4, 1985, 85-1 CPD ¶ 273; D.M. Anderson Co., B-186907, Aug. 3, 1976, 76-2 CPD ¶ 123. Therefore, Systems for Business' use of Express Mail does not allow the National Bureau of Standards to consider its offer.

Systems for Business implies that its proposal may have been mishandled by the government. The firm states that its inquiries reveal that the Postal Service has no record of the delivery, even though there is a requirement for recording Express Mail deliveries, and that National Bureau of Standards personnel believe that the package may have been misdirected to the Rockville, Maryland, post office, which in turn forwarded it to Gaithersburg.

In addition, according to Systems for Business, the National Bureau of Standards does not log in Express Mail when it arrives, but rather when it leaves the mail room for internal delivery. The protester states that

there are apparently no procedures for internal delivery after 1 p.m. of any given day, so that when Express Mail arrives after this time, it is placed in a safe and delivered the following day.

In support of its argument that the late proposal should be considered, Systems for Business has submitted a copy of its Express Mail return receipt, on which it appears that the date of delivery was first recorded as "6/23/86," then overstruck to read "6/18/86."

Generally, a protester must establish the timely receipt of a bid, proposal, or modification at the government installation before we will consider alleged mishandling. In the absence of the type of evidence of timely receipt that is acceptable under the late proposals clause, i.e., the time date stamp on the package or other documentary evidence of receipt maintained by the installation, the question of government mishandling is irrelevant. Ralph Construction, Inc., B-220006, Dec. 12, 1985, 85-2 CPD ¶ 650; Delta Lighting Corp., B-219649, Oct. 30, 1985, 85-2 CPD ¶ 491.

Because Systems for Business has raised serious questions as to the National Bureau of Standards' procedures for documenting the time that incoming mail is received and for forwarding Express Mail from the mail room to its ultimate destination, however, we will consider whether there was mishandling here. On the record before us, we cannot conclude that there was.

First, any delay of an Express Mail delivery by the U.S. Postal Service is not considered to be mishandling by the government. Triumph United Corp., B-216546 Oct. 18, 1984, 84-2 CPD ¶ 419. The FAR late proposals clause applies only to mishandling after receipt at the government installation. 48 C.F.R. § 52.215-10(a)(2). Second, an offer is considered late even if it has been received by the agency by the time specified, but at some location such as a mail room. J.E. Steigerwald Co., Inc., B-218536, Apr. 19, 1985, 85-1 CPD ¶ 453. An offeror must allow sufficient time for a bid or proposal to pass through any intermediate stops and reach the office specified in the solicitation by the indicated time. LectroMagnetics, Inc., 56 Comp. Gen. 50, 52 (1976), 76-2 CPD ¶ 371.

We agree with the protester that agencies should have provisions for priority handling of bids or proposals that arrive within a few hours of their due dates, rather than relegating them to a safe for next day delivery. When, however, a bid or proposal is placed in an Express Mail envelope or a pouch provided by a commercial carrier for overnight delivery, the required information as to the solicitation number, deadline for receipt, and ultimate destination may no longer be apparent from the outside envelope. Unless the outside envelope is clearly marked with this information--and Systems for Business does not allege that its Express Mail envelope was--the offeror has contributed to any delay in delivery.

See J.E. Steigerwald Co., Inc., supra. The use of overnight delivery or an "urgent" label is not, in itself, sufficient notice to the contracting agency that the material being delivered is a bid or proposal that must meet a particular deadline. S&W Enterprises, Inc., B-219716, Aug. 19, 1985, 85-2 CPD ¶ 192.

The protester's Express Mail return receipt, on which the date of delivery appears to have been changed from June 23 to June 18, does not establish that the proposal was timely, since proposals were due 2 days earlier, on June 16. The protester speculates that mail room personnel failed to complete the receipt until some time after the proposal actually arrived. Since there is no space in which to indicate time of day on the receipt, however, even a June 16 date would not establish that the protester allowed sufficient time for delivery within the National Bureau of Standards.

Finally, System for Business asserts that rejection of its proposal is not in the best interest of the government. Systems for Business states that rejection on technical, nonsubstantive bases will discourage innovative small businesses from seeking government contracts. As we have stated on a number of occasions, however, solicitation guidelines must be strictly enforced in order to maintain confidence in the integrity of the competitive procurement system. See Arnold Rooter, Inc., 65 Comp. Gen. 71 (1985), 85-2 CPD ¶ 574.

We dismiss the protest.


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