



Comptroller General  
of the United States  
Washington, D.C. 20548

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Gorczycki

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## Decision

**Matter of:** Austin Telecommunications Electrical Inc.  
**File:** B-254425  
**Date:** August 19, 1993

Philip J. Murphy for the protester.  
Henry J. Gorczycki, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Where proposal sent via the United States Postal Service's Two Day Priority Mail service is received by the contracting agency after the time for receipt of proposals stated in the solicitation, the proposal is late and should be rejected because Two Day Priority Mail is not one of the mail services excepted from the rule requiring the rejection of late proposals, nor does mishandling by the Postal Service constitute "government mishandling."

### DECISION

Austin Telecommunications Electrical Inc. protests the rejection of its proposal under request for proposals (RFP) No. N68936-93-R-0172 issued by the Department of the Navy, Naval Air Warfare Center, China Lake, California, for telecommunications operation and maintenance support services.

We dismiss the protest.

Austin mailed its proposal via the United States Postal Service's Two Day Priority Mail service on July 9, 1993. The date for submission of proposals was July 13, 1993. The Navy received Austin's proposal from the Postal Service on July 15. Pursuant to the RFP provision set forth at Federal Acquisition Regulation (FAR) § 52.215-10, which generally requires the rejection of late proposals, the Navy rejected Austin's proposal as late.

Austin asserts that its proposal would not have been late but for the "government's," that is, the Postal Service's negligence in failing to deliver Austin's proposal within

2 days. Austin argues that this delay constitutes government mishandling and, thus, its proposal should not be rejected for being late.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. Robert R. Nathan Assoc., Inc., B-230707, June 28, 1988, 88-1 CPD ¶ 615. A late proposal will qualify for an exception to this rule if it is received before award is made and satisfies one of the following conditions:

"(1) [the proposal] [w]as sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers;

"(2) [the proposal] [w]as sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the [g]overnment that the late receipt was due solely to mishandling by the [g]overnment after receipt at the [g]overnment installation;

"(3) [the proposal] [w]as sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals; . . . or

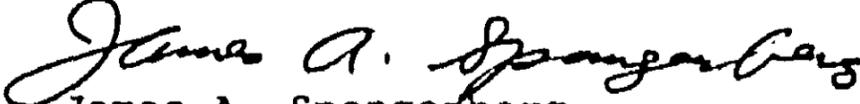
"(4) [the proposal] [i]s the only [one] received."

FAR §§ 15.412(c); 52.215-10; see American Kleaner Mfg. Co., Inc., B-243901.2; B-243901.3, Sept. 10, 1991, 91-2 CPD ¶ 235.

Here, Austin's proposal was late and did not qualify under any of these exceptions. Austin mailed its proposal by the Postal Service's Two Day Priority Mail, which is not one of the specified mail services specifically excepted from the late proposal rule, i.e., registered, certified, or Express Mail Next Day. Nor does the Postal Service's failure to meet its assured delivery terms constitute "government mishandling" under this provision. It is well established that such mishandling must be attributable to the procuring agency and must occur after it is received at that agency's installation; late delivery by the Postal Service does not satisfy either of these conditions. Ferren-Manuele & Assoc., Inc., B-235191, Apr. 28, 1989, 89-1 CPD ¶ 411; Triumph United Corp., B-216546, Oct. 18, 1984, 84-2 CPD ¶ 419. Therefore, Austin has failed to state a basis upon

which we could find that the Navy should accept Austin's late proposal.

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel