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Comptroller General  
of the United States

33899

Washington, D.C. 20548

## Decision

**Matter of:** Shirley J. Maciel  
**File:** B-257326  
**Date:** September 12, 1994

### DECISION

Shirley J. Maciel protests the rejection of her bid under invitation for bids (IFB) No. DU209B940105003, issued by the Department of Housing and Urban Development (HUD) for mortgage insurance endorsement services. The protester contends that the bid, which was rejected as late because it was not received by the contracting officer until after bid opening, should have been considered for award since the sole reason for its late receipt was government mishandling.

We dismiss the protest.

The IFB required the submission of bids by April 4, 1994, at 2:00 p.m. Hand-delivered bids were to be taken to Room 9-0411 of the 450 Golden Gate Avenue (San Francisco) HUD building. Bids sent by mail were to be sent to Box 36003 at the same address. A bidder was to identify the procurement and affix this information to the lower left hand corner of the bid envelope.

Bids were opened on April 4. On April 6 at 9:35 a.m., the protester's bid--without a bid envelope--was found in the in-box of the secretary of the HUD Director of Administration. Since, there was no indication on the bid as to when it had been actually received at HUD or by whom, it was time-date stamped and then sent to the contracting officer. An inquiry by the contracting officer disclosed that no HUD employee, including the mail room staff, had any knowledge of the bid prior to its discovery in the secretary's in-box. By letter of April 27, the contracting officer advised the protester that the bid had been rejected as late.

The protester has submitted a customer receipt from the Postal Service to show that on March 30, 1994, at 2:57 p.m. it mailed (from a San Francisco location) its bid to HUD at the cost of \$2.90. On the receipt are the handwritten words

"Contract submission." The protester states that this is the receipt it obtained when it mailed its bid by priority mail and that, although a 2-day delivery for priority mail is not guaranteed, the local post office supervisor has stated that it would be inconceivable that delivery would have taken 8 days. The envelope containing the bid, the protester states, was properly labeled in accordance with pertinent IFB instructions. Accordingly, the protester maintains that the only possible explanation for the late receipt of its bid can be government mishandling caused by the agency's failure to retain the bid envelope, its failure to time-date stamp the bid in a timely manner after its receipt at the agency, and its failure to expeditiously deliver the bid to the contracting officer after its receipt. The protester contends that the burden of proof is on the agency to prove that government mishandling did not occur, since the agency created the problem with establishing when the bid was received when it failed to retain the envelope containing the bid, thereby destroying the evidence that would have established when the bid had been received at the agency.

It is the bidder's responsibility to assure timely receipt of its bid, and the bidder must bear the responsibility of the late arrival of its bid unless the specific conditions set forth in the Federal Acquisition Regulation (FAR) for consideration of late bids are met. See Orange Shipbuilding Co., Inc., B-230285, Mar. 9, 1988, 88-1 CPD ¶ 246. These rules permit the consideration of late bids which were sent by certified or registered mail at least 5 days prior to bid opening, or sent by United States Postal Service Express Mail Next Day Service not later than 5:00 p.m. at least 2 working days prior to the bid opening, or where the sole or paramount cause of late receipt is government mishandling after receipt at the government installation. FAR § 14.304-1.

The protest submissions do not establish timely delivery and receipt of the protester's bid at the agency which is a prerequisite to any consideration of an allegation of government mishandling. The protester's bid was not sent by certified, registered, or U.S. Postal Service Express Mail. The protester has submitted a mail receipt showing that it mailed correspondence on March 30. There is nothing on the receipt to indicate what was mailed except for a handwritten notation, presumably made by the protester, indicating that the receipt was for a "Contract submission." This receipt does not identify the specific contract or procurement involved. In short, the mail receipt does not establish that the protester's bid for the protested

procurement was even mailed or, at least, was mailed on March 30. Since there is no evidence of timely delivery of the bid to the agency, we think the agency properly rejected the protester's bid.

We dismiss the protest.



Michael R. Golden  
Assistant General Counsel