

DECISION

DIGEST - L - Cont
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

80-1 CPD III

244

FILE: B-197457

DATE: February 7, 1980

MATTER OF: Devoe & Reynolds Company

DIGEST:

1. Protester's late bid, sent by Postal Service "express mail service" 2 days prior to bid opening, was properly rejected by agency, since bid was not sent by certified or registered mail not later than fifth calendar day prior to date specified for receipt of bids as provided by IFB. Therefore, late bid may not be considered even though late receipt allegedly resulted from unforeseen severe weather conditions which disrupted delivery of mail.
2. Protest is summarily denied where protester's initial submission demonstrates affirmatively that protester is not entitled to relief.

Devoe & Reynolds Company (Devoe) protests the rejection of its bid by the Federal Supply Service, General Services Administration (GSA), Seattle, Washington, under invitation for bids (IFB) 10PR-XTS-6857.

The basis for the rejection was that Devoe's bid was received by GSA after the time for bid opening specified in the IFB (January 10, 1980, at 10:30 a.m.). On January 8, 1980, the bid package was delivered to and sent by the United States Postal Service via "express mail service", which guaranteed delivery by the next day. However, the bid was not received until the afternoon of January 10, 1980. Therefore, the bid was determined to be a late bid. Devoe advises that the reason for its bid's late arrival was a severe snowstorm in the Seattle area, causing disruption of mail delivery. The protester does not contend that its bid was mishandled after receipt at the Government installation.

We believe the issue presented may be decided on the basis of the protester's initial submission without further development under our protest procedures, 4 C.F.R. Part 201 (1979), because the documents submitted, read in the light most favorable to the protester, affirmatively demonstrate that the protester is not entitled to relief. See Hawthorn Melody, Inc., B-190211, November 23, 1977, 77-2 CPD 406.

Standard Form (SF) 33-A (1-78), "Solicitation Instructions and Conditions", was incorporated into the IFB. Clause 7 of that form states in pertinent part:

"LATE BIDS, MODIFICATIONS OF BIDS, OR WITHDRAWAL OF BIDS

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and * * *:

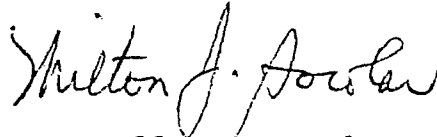
"(1) It was sent by registered mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); * * *"

While it is unfortunate that the severe snow in the Seattle area prevented Devoe's bid from arriving prior to bid opening, we have consistently held that it is the bidder's responsibility to see that its bid is mailed in time to reach the designated office by opening time. Z B Precision Products, Inc., B-187985, May 6, 1977, 77-1 CPD 316. "Express mail" is not an acceptable substitute for registered or certified mail for purposes of the late bid clause. We have

B-197457

specifically held that a bidder assumes the risk of late delivery where, as here, it elects to use express mail rather than registered or certified mail when using the Postal Service for delivery of its bid. See Graphic Controls Corporation, B-194698, May 23, 1979, 79-1 CPD 373. In any event, we note that even if the protester had used registered or certified mail, its late bid could not have been considered since it was mailed less than five days prior to bid opening.

Accordingly, Devoe's protest is summarily denied.



For the Comptroller General
of the United States