



United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** Carroll Gene Brewer

**File:** B-285484

**Date:** August 22, 2000

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M. Keith Blythe, Esq., for the protester.  
Lori Polin Jones, Esq., Department of Agriculture, for the agency.  
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

Agency properly considered timber sale bid as a mishandled late bid where it was not discovered until after bids were opened due primarily to failure of procurement officials to check bid receiving official's desk for bids prior to bid opening.

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### DECISION

Carroll Gene Brewer protests that the Forest Service, Department of Agriculture, should have rejected as late the high bid submitted by Travis Lumber Company under the Little Bigger Timber Sale, Ozark-St. Francis National Forests, Arkansas.

We deny the protest.

The facts here are undisputed. The timber sale prospectus stated that bids would be opened on May 18, 2000 at 2 p.m., and provided the following mailing address: "Ozark-St. Francis National Forests, ATTN: Contracting Officer, 605 West Main Street, Russellville, AR 72801." Agency Report (AR), exh. A, Timber Sale Prospectus, at 1. Bids were to be enclosed in a sealed envelope marked with "Bid for Timber" and the sale name or number and the date and time of bid opening. AR, exh. A, Timber Sale Prospectus, Bid for Advertised Timber, Instructions to Bidders, at 7.

At approximately 1:30 p.m. on May 18, an agency staff officer retrieved from the mailroom all of the mail addressed to the contracting officer and, at 1:40 p.m., since the contracting officer was away from his desk, placed it on the contracting officer's

chair. The mail included Travis's bid, which was in a Federal Express envelope that was addressed to the contracting officer, but did not indicate that it contained a bid. AR, exh. C, Statement of David Craig Hilburn.

Shortly before 2 p.m., the bid opening official accepted a bid from Brewer, and then checked the mailroom and the mail clerk's desk for other bids, but found none. She proceeded to the timber shop, where Travis's bid lay on the contracting officer's chair. (The contracting officer's desk is in the timber shop.) At 2 p.m., she opened the only known bid, Brewer's, and declared it to be the apparent high bid in the amount of \$466,304.71. At approximately 2:10 p.m., the staff officer heard the bid opening official talking with a representative from Brewer in the hall, and thereby became aware that bid opening was concluded. The staff officer showed the bid opening official Travis's bid envelope on the contracting officer's chair; she hand-delivered the envelope to the contracting officer, who was still working in another office. At 2:14 p.m., the contracting officer opened the Federal Express envelope and removed an envelope addressed to "USDA-Forest Service." Upon opening this envelope, the contracting officer discovered Travis's bid in the amount of \$494,751. After determining that Travis's bid was responsive, the contracting officer concluded that the bid was late as a result of mishandling by agency employees, and that it therefore could be considered. AR, exhs. B and C, Statement of David Craig Hilburn, and exh. E, Contracting Officer's Statement.

Brewer challenges the agency's determination that the late discovery of Travis's bid was due to agency mishandling. Brewer maintains that Travis's failure to label its bid package as containing a bid was the cause of the lateness of the bid, and that there thus was no basis for considering it. Carolina Archaeological Servs., B-224818, Dec. 9, 1986, 86-2 CPD ¶ 662 (late offer will not be considered where it was received at the agency mailroom prior to bid opening but was not transported to the proper designation specified in the solicitation on time due to mislabeling).

The Forest Service's "Timber Sale Preparation Handbook," FSH 2409.18 § 62.11, (AR, exh. F), which governs the treatment of late bids on timber sales, provides that a late bid shall not be considered unless receipt occurs before award and, relevant here, the contracting officer determines that the late receipt was due to mishandling by the Forest Service after receipt at the post office by the designated Forest Service installation.<sup>1</sup> Where the record shows that a bid was not timely received in the bid opening location due primarily to the agency's failure to establish or follow reasonable procedures for receiving bids, the agency's actions constitute

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<sup>1</sup> Although Travis's bid was at the contracting officer's desk prior to bid opening, and his desk is in the timber shop, the room where bids were opened, we view the bid as a late bid (rather than a timely received, misplaced bid, see generally Pacific Tank Cleaning Servs., Inc., B-279111.2, July 1, 1998, 98-2 CPD ¶ 2 at 3) because it was not delivered to or within the control of the bid opening official prior to bid opening.

mishandling. Timber-Mart Southwest, Inc., B-274677, Jan. 22, 1997, 97-1 CPD ¶ 38 at 3; Sun Int'l, B-208146, Jan. 24, 1983, 83-1 CPD ¶ 78 at 3.

We agree with the agency that the lateness of Travis's bid was due principally to mishandling. The record establishes that Travis's bid was delivered to the Forest Service mailroom prior to 1:40 p.m. the date of bid opening, and that then, at 1:40 p.m., 20 minutes before the 2 p.m. bid opening, it was left at the contracting officer's desk by the staff officer. Although the contracting officer was the official designated in the prospectus as the recipient of mailed bids, the contracting officer was not present at his desk or in his office prior to bid opening, and did not return to his office prior to bid opening to determine whether any last minute bids had been received. The bid opening official did check the mailroom and the mail clerk's desk prior to bid opening, but she too failed to check the contracting officer's desk. This failure by the cognizant officials to check the desk of the official designated for receipt of bids constituted mishandling.

We do not think the late receipt of Travis's bid is attributable in any significant way to the absence of bid markings on the package. The absence of markings did not prevent the package from being delivered to the desk of the official designated for receipt of the bids. While it is possible that the staff officer would have hand-carried the package to the bid opening official (instead of leaving it at the contracting officer's desk) if the package were marked as a bid, this at best would have remedied a problem created in the first instance by the cognizant officials' failure to follow a reasonable course of action to ensure that all bids were identified prior to bid opening.<sup>2</sup> We therefore conclude that the late receipt of the bid was due primarily to mishandling by the agency.<sup>3</sup>

The protest is denied.

Robert P. Murphy  
General Counsel

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<sup>2</sup> There is no reason to conclude that the absence of markings would have prevented the identification of the package as a bid had the desk been checked. In this regard, even the staff officer who delivered the package to the contracting officer's chair "wondered if the envelope contained a bid"; although he decided that there probably was no bid inside due to the absence of markings, he also "thought that [the contracting officer] would be back at his desk prior to bid opening." AR, exh. C.

<sup>3</sup> We further note that, since Travis's bid was relinquished to the Forest Service mailroom staff well prior to the bid opening, and it remained in the Forest Service's possession until it was opened, acceptance of the bid does not compromise the integrity of the bidding system. Kelton Contracting, Inc., B-262255, Dec. 12, 1995, 95-2 CPD ¶ 254 at 3.