

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

50747 97230

FILE: B-183046

DATE: June 3, 1975

MATTER OF: Best Services, Inc.

DIGEST:

1. Protest by offeror, after learning that its proposal was received late, that requirements for K.P. service should have been added to offeror's existing contract rather than solicited and that solicitation was not in writing will not be considered, since it is untimely under Bid Protest Procedures and Standards which provide that protests based upon alleged improprieties in solicitation shall be filed prior to closing date for receipt of proposals.
2. Proposal sent by certified mail on January 10, 1975, which was received January 14, 1975, day after closing date for receipt of proposals, was not for consideration under ASPR, since it was not mailed at least 5 calendar days prior to closing date for receipt of proposals.

On January 8, 1975, the contracting office at Fort Stewart, Georgia, solicited proposals by telephone for K.P. Service. Each prospective offeror contacted was advised that written proposals were required to be furnished by 4:15 p.m. on January 13, 1975. The proposal from Best Services, Inc. (Best), sent certified mail on January 10, 1975, from Smithville, Tennessee, was not received until the afternoon of January 14, 1975. Since it arrived after the exact time set for receipt, it was designated a late proposal and left unopened. The contract was awarded to another offeror on January 15, 1975.

After learning that the proposal would not be considered, Best protested that the requirements should have been added to its current K.P. contract instead of being let to competition, that the solicitation was not in writing and that in the ordinary course of the mail, the proposal should have arrived on time. Best also claimed damages as low offeror if an award was made to another offeror.

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The protest that the requirements should have been added to Best's existing contract and that the solicitation was not in writing was not made until after Best learned that its proposal was received late. That aspect of the protest will not be considered since it is untimely under the Bid Protest Procedures and Standards which provide:

"* * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of proposals shall be filed prior to * * * the closing date for receipt of proposals * * *." 4 C.F.R. § 20.2(a) (1974).

With regard to the late offer, Armed Services Procurement Regulation (ASPR) § 3-506(b) (1974 ed.) provides:

"Offerors are responsible for submitting proposals * * * so as to reach the designated Government office on time. Proposals * * * received * * * after the exact time specified are 'late' and shall be considered only if the circumstances outlined in the provision in 7-2002.4 are applicable * * *."

ASPR § 7-2002.4 (1974 ed.) states in pertinent part:

"LATE PROPOSALS, MODIFICATIONS OF PROPOSALS AND WITHDRAWALS OF PROPOSALS (1974 APR)


(a) Any proposal 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

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);"

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Since Best's proposal was not mailed at least 5 calendar days before the specified closing date for receipt of proposals, it was not for consideration under the applicable regulations.

Accordingly, the protest and the claim for damages resulting from an award to another offeror are denied.


Deputy Comptroller General
of the United States