

98694

DECISION



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

50856

FILE: B-183543

DATE: July 1, 1975

MATTER OF: Kirschner Associates, Inc.

DIGEST:

Where proposal package was received in proper office by required time, and such receipt was verified by procurement personnel in response to offeror's telephone call, but without reference to offeror's mislabeling of package with non-existent RFP number, proposal may be considered timely received, notwithstanding return of package to offeror unopened as result of incorrect labeling, and subsequent resubmission after closing date for submission of proposals but before award.

Kirschner Associates, Inc. (Kirschner) protests the rejection of its proposal for an assessment of the status of bi-lingual vocational training, submitted in response to request for proposals (RFP) No. 75-26, issued by the Office of Education (OE), Department of Health, Education, and Welfare. Initial proposals were due in the OE Application Control Center (ACC) by 3:30 P.M., March 7, 1975, and the Kirschner hand-carried proposal package, although erroneously sent to the address designated in the RFP for mailed offers, was received in the ACC on the morning of March 7. However, Kirschner had transposed two numbers on the face of the proposal package, so that the package indicated that it contained a proposal for RFP No. 76-25 (a non-existent RFP), rather than for RFP No. 75-26.

Prior to the deadline for receipt of proposals, a Kirschner employee telephoned the ACC and asked whether Kirschner's proposal had been received. The record conflicts as to the manner by which either party to the conversation identified the package, but it is clear that the ACC employee did, at the least, verify receipt of a proposal submitted by Kirschner. As a result of Kirschner's mislabeling, however, ACC personnel assumed that the proposal was in response to RFP No. 75-25, under which initial proposals had been due four days earlier, and therefore Kirschner's proposal was rejected as late in accordance with paragraph 8 of the Solicitation Instructions and Conditions relative to late proposals. The package was returned to Kirschner where, upon receipt on March 24, it was reshipped to the ACC with the indication that it was intended for RFP No. 75-26. The proposal has been evaluated by OE, but further action is being withheld pending a decision by this Office as to whether the proposal may be considered for award.

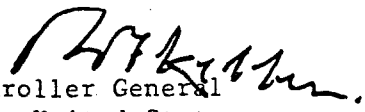
PUBLISHED DECISION
55 Comp. Gen.

Although the Kirschner proposal package was mislabeled, we believe that ACC personnel should have discovered the error without returning the package to the sender. Federal Procurement Regulations (FPR) § 1-2.401(b) (1964 ed.) provides for the opening of unidentified bids solely for the purposes of identification. Under the circumstances of the instant case, it would have been reasonable to treat Kirschner's proposal in the same manner. We note that Kirschner's employee did in fact telephone the ACC to verify receipt of its proposal, and although the record is unclear as to the extent of the verification requested, it is clear that Kirschner was informed that its proposal had been received. Once verification of receipt is requested, it must be undertaken responsibly and, therefore, when the ACC employee was specifically directed to Kirschner's proposal package, the duty arose to identify any obvious error thereon, in this case the labeling with a non-existent RFP number. Accordingly, since the package was received in the proper office by the required time, we believe the proposal should be considered timely received.

Notwithstanding the timely receipt, we are left with the question of the effect of the return of the proposal to Kirschner. Clearly, under a formally advertised procurement the return of a bid to the sender after the bid opening would prevent its further consideration for award under any circumstances. See in this connection 46 Comp. Gen. 859 (1967). Here, however, we are dealing with a negotiated procurement. Unlike formal advertising, competition proposals are not publicly opened during the evaluation process. In view thereof, we see no overriding reason to insist that the return of the proposal to Kirschner should prevent it from being thereafter considered for an award upon its resubmission to the contracting agency.

Accordingly, the Kirschner proposal may be considered for award as proposed.

We would point out, however, that consideration of a resubmitted offer may be proper only where such offer was physically received by the procuring activity by the designated time but improperly returned. Where actual receipt of the proposal was late, the applicable untimeliness provisions are controlling.


Deputy Comptroller General
of the United States