

PL-26

DECISION



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

9621

FILE: B-194257

DATE: March 28, 1979

MATTER OF: Monarch Marking Systems *DLG 01366*

DIGEST:

[Protest of Late Bid Rejection]

Protester's late bid was properly rejected notwithstanding mailing of bid by certified mail, since bid was sent less than five calendar days prior to specified bid opening.

Monarch Marking Systems (Monarch) protests the rejection of its bid by the General Services Administration (GSA) under solicitation No. FPOP-FU-400027-A. *AGC 00017*

The basis for the rejection was that Monarch's bid was not received by GSA until after the time set for bid opening. Bid opening was scheduled for 11:00 a.m., February 2, 1979. Monarch's bid was sent by the U.S. Postal Service to GSA via "certified mail" less than 5 days prior to bid opening. Monarch states that although the bid was sent less than 5 days prior to bid opening the Postal Service guaranteed that Monarch's bid would be delivered before the February 2 deadline. Monarch does not dispute the fact that its bid was late, but argues that "due to extenuating circumstances," its bid should be considered. *AGC 00052*

Standard Form (SF) 33A, "Solicitation Instructions and Conditions," was incorporated into the solicitation. Clause 7, "Late Bids, Modifications of Bids, or Withdrawal of Bids," of SF 33A states in pertinent part:

"(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 either:

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"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for 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), or

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation."

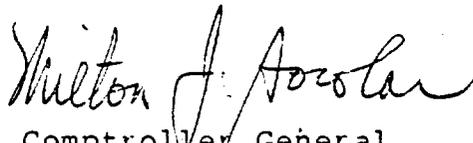
It is our view that Monarch's bid was properly rejected by the contracting officer. Monarch's bid should have been delivered to the designated office prior to bid opening, but was not received until after bid opening. The fact that Monarch's bid was guaranteed did not relieve Monarch of its obligation to assure timely arrival of its bid. Our Office has consistently held that a bidder has the responsibility to assure timely arrival of its bid and must bear the responsibility for its late arrival, unless the specific conditions of the solicitation are met. Robert Yarnell Richie Productions, B-192261, September 18, 1978, 78-2 CPD 207.

Under the terms of the solicitation, a late bid may be considered if sent by registered or certified mail in the manner outlined above or where "the late receipt was due solely to mishandling by the Government after receipt at the Government installation," at which the procurement is being made. Although Monarch's bid was sent via "certified mail," it was not sent within the time limits prescribed in the solicitation. Further, the Postal Service's failure to timely deliver the bid does not constitute Government mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.

Monarch also contends that since there is only one other bidder, the Government should compare Monarch's price with that of the other bidder's. However, section 1-2.301 of the Federal Procurement Regulations (1964 ed. amend. 178) states that for a bid to be considered for award it must comply with the IFB (as to the method of timeliness of submission and as to the substance of any resulting contract) so that all bidder's may stand on an equal footing and the integrity of the competitive bidding system may be maintained. Since Monarch's bid was late, it did not comply with the IFB and, therefore, cannot be considered for award. Furthermore, a contract can be awarded to the only bidder if there was a sufficient effort to obtain competition, the bid price was reasonable, and there was no deliberate attempt to preclude a particular firm from bidding. Michael O'Connor, Inc., B-185502, May 14, 1976, 76-1 CPD 326. There is no indication of any deviation from these principles.

Our Office will generally request a report from the procuring agency upon receipt of a bid protest in accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1976). However, where it is clear from a protester's submission that the protest is legally without merit, we will decide the matter on that basis. MEMCOM, B-191526, April 6, 1978, 78-1 CPD 276.

Accordingly, the protest is summarily denied.

for 
Comptroller General
of the United States