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DECISION



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

[Protest of Bid Rejection For Lateness]

FILE: B-198834

DATE: November 28, 1980

MATTER OF: MET Electrical Testing Company

DIGEST:

DUG 05593

1. Although contracting officer should have inquired as to when late proposal was received in procuring agency's mailroom, failure to do so does not affect propriety of award where proposal could not have been accepted for award.
2. So-called "Christian doctrine" does not permit incorporation of mandatory clauses which have been inadvertently omitted from solicitations.
3. Where all relevant evidence does not show that Government mishandling during process of proposal receipt or after receipt of proposal was cause of late receipt of proposal, proposal was properly not considered for award and effect of deletion of evidentiary requirement from late proposals clause need not be considered.

MET Electrical Testing Company, Inc. (MET), *DUG 05594*
 protests the rejection of its late proposal and the subsequent award to another firm of contract No. GS-03C-06174 by the General Services Administration (GSA), Region 3, Philadelphia. Based on our review, we deny the protest.

MET mailed its proposal by first-class mail on Friday, April 25, from Baltimore, Maryland. The proposal was properly addressed to the designated GSA receiving office, and the solicitation number and the date and time for the submission of proposals were written on the front of the proposal envelope. The deadline for the receipt of proposals was 2:30 p.m. on April 28. The United States Postal Service advises that according to its service standards, a letter

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mailed first class from Baltimore on April 25 should have been delivered in Philadelphia on April 28. However, it also advises that these standards, while met 95 percent of the time, would "in no way" guarantee delivery in that specified amount of time.

It is not clear when the MET proposal arrived at the GSA installation. The policy--it has now been changed--at that time was not to stamp the mail with a time-date stamp when it was received in the GSA mailroom. The only GSA receipt stamp on the MET proposal was that of the GSA Business Service Center (BSC) (the BSC is located in the same building as the GSA receiving office and the GSA mailroom), showing its receipt there at 12:49 p.m. on April 29. Thus, the proposal was admittedly late arriving at the designated office.

No explanation is available as to why the proposal was sent to BSC personnel. A BSC employee advised the contracting officer on April 29 of the receipt of the proposal before any award had been made. The contracting officer picked up the proposal from the BSC on May 8 after having made an award on one of the two timely received proposals.

(The bases of the MET protest are twofold. First, it is contended that the proposal was acceptable under the late proposals clause in the solicitation because the proposal was received late by the contracting officer due to Government mishandling.) MET notes the Postal Service statement that if mailed on April 25, the proposal should have been delivered in Philadelphia on April 28. MET also notes that the GSA mailroom clerk picks up the mail from the post office at 8:45 a.m., sorts it about 9 a.m., and delivers it between 10 and 11 a.m. Consequently, MET argues, since the proposal would have arrived the morning of April 28 and would have been delivered by 11 a.m., the fact that it was not shows that the Government mishandled the MET proposal, thereby causing its late receipt by the procurement personnel. MET further notes, as proof that the GSA did not handle its mail properly, that although the mailroom clerk stated that mail delivery is completed about 11 a.m., the BSC did not receive the MET proposal until 12:49 p.m. Secondly,

MET complains that the contracting officer should have looked into the reasons causing the late receipt of the proposal and should have made a determination as to whether the MET proposal could be accepted and considered for award prior to making an award to another offeror. No such determination was made.)

GSA argues that the protest must be rejected since the evidence necessary to establish Government mishandling after the receipt of the proposal at the Government installation is nonexistent.) Section 1-3.802-1(a) of the Federal Procurement Regulations (1976 ed. amend. 194) sets forth the late proposals clause requirement that to establish such Government mishandling the only acceptable evidence for:

"(2) The time of receipt at the Government installation is the time-date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation."

Thus, since there is no mailroom time-date stamp on the MET proposal and no other documentary evidence of receipt exists, there is no proof under the cited regulation as to when the proposal was first received at the installation. Without proof that the installation first received the proposal prior to the deadline set for the receipt of proposals, Government mishandling cannot be proven as the cause of the late receipt under the regulation.

The GSA also notes that even were Government mishandling during the process of receiving the proposal alleged (in which case, all relevant evidence--except the proposer's self-serving statements--might be considered), consideration of all the available evidence does not show this mishandling. Finally, the GSA maintains that no showing of mishandling after proposal receipt at the Government installation can be made even if all available evidence is considered.

We believe that the contracting officer should have inquired as to when the MET proposal was received in the GSA mailroom--if that were ascertainable--before making an award.) However, in view of our conclusion

under any circumstances that the proposal could not be considered for award, we do not believe this procedural error may affect the propriety of that award.

The above-cited portion of the late proposals clause, dealing with what evidence will be considered to determine whether Government mishandling occurred, was not included in the solicitation. Notwithstanding this omission, GSA maintains that it may be read into the solicitation under G. L. Christian & Assoc. v. United States, 160 Ct. Cl. 1, 312 F.2d 418, rehearing denied, 160 Ct. Cl. 58, 320 F.2d 345, cert. denied, 375 U.S. 954 (1963).

It has been the position of our Office that the so-called "Christian doctrine" is limited to the incorporation of mandatory contract clauses into an otherwise validly awarded Government contract and does not stand for the proposition that mandatory provisions may or should be incorporated into an invitation for bids/request for proposals where those provisions have been inadvertently omitted. 47 Comp. Gen. 685 (1968); Kleen-Rite Corporation, B-189458, September 28, 1977, 77-2 CPD 237.

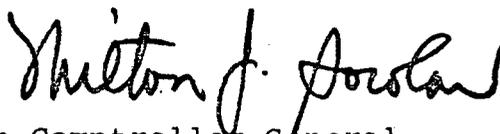
(The effect of the deletion of the evidentiary requirement from the solicitation need not be decided, since a review of all relevant evidence--apart from the time-date stamp--does not show that GSA mishandled the MET proposal.)

While MET offers a statement from the United States Postal Service to prove the date on which the Government installation should have received the proposal, this statement also notes that "in no way" can it be guaranteed that the delivery was made when it should have been. Further, that the BSC personnel placed the time of receipt at 12:49 p.m. instead of 11 a.m. could mean that the BSC personnel did not note the time of receipt until some time after its actual delivery, but it does not mean beyond a doubt that the proposal was received initially by the GSA on April 28 instead of April 29, as alleged by the protester. Thus, the evidence shows what may or may not have occurred, but it does not show conclusively that there was mishandling by the Government installation after the MET proposal

was received or during the process of its receipt by the installation. Accordingly, we believe that the MET proposal was properly not considered for award. Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351; Gross Engineering Company, B-193953, February 23, 1979, 79-1 CPD 129; Woodbridge Cleaners, Inc., B-194361, October 17, 1979, 79-2 CPD 261; John Wile Construction Company, Inc., B-195717, November 16, 1979, 79-2 CPD 358.

Where is cannot be established by objective evidence that a bid arrived at the Government installation prior to bid opening, it would not be fair to other bidders or in the interest of the competitive bidding system to consider that bid. While we recognize that MET cannot be blamed for the failure of its proposal to have been time-date stamped, we do not believe that this fact may have any weight on our decision as to whether the MET proposal was properly rejected as having been received late. Z B Precision Products, Inc., B-187985, May 6, 1977, 77-1 CPD 316. In that case, we pointed out that this failure can be avoided if a company mails its bid or offer by certified or registered mail 5 days prior to bid opening or the day scheduled for receipt of proposals as contemplated by the terms of the standard late bids/proposals provisions.

The protest is denied.



For the Comptroller General
of the United States