

17956

BURTON
712

DECISION



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

[Protest of Proposal Rejection For Lateness]

FILE: B-202878

DATE: May 5, 1981

MATTER OF: Cal Poly Kellogg Unit Foundation, Inc.

06619

DIGEST:

Proposal sent by express mail, which arrives at procuring installation after closing time for receipt of proposals, is rejected since delay in Postal Service does not come within rule allowing consideration of late proposals when lateness is due to mishandling by the Government after receipt at the procuring installation. Rule applies only after Postal Service has made delivery to procuring installation.

Cal Poly Kellogg Unit Foundation, Inc., (Foundation) protests the decision by the Department of the Interior (Interior) that the Foundation's offer submitted in response to request for proposals (RFP) No. YA-553-RFP1-16 was received late and could not be considered for the award. For the reasons indicated below, we deny the protest.

The RFP solicited offers to evaluate various materials for corrosion resistant properties. Offers were required to be received no later than 4 p.m., April 1, 1981. The Foundation's proposal, sent by U.S. Postal Service express mail, was mailed at 4:30 p.m. on March 31, 1981, but was not delivered to the agency's mailroom until 7 a.m., April 2, 1981. The Foundation readily admits that its proposal was received late. Nonetheless, it contends that the Postal Service is a part of the Federal Government, that delivery was delayed by the Postal Service, and that this constitutes mishandling by the Government so that the late proposal should be considered for award.

~~016725~~ **115087**

The RFP did contain the standard clause entitled "Late Proposals, Modification of Proposals and Withdrawals of Proposals," see Federal Procurement Regulations (FPR) § 1-3.802-1 (1964 ed. amend. 194), which in pertinent part provided that a late proposal will not be considered unless it was sent by mail and late receipt of the proposal was due to mishandling after receipt at the procuring installation. The protester's argument, however, is without merit.

Although the Postal Service offers next day delivery with its express mail service, delay by the Postal Service does not constitute mishandling by the Government after receipt at the procuring installation. Enrico Roman, Inc., B-196350, January 21, 1980, 80-1 CPD 61. The mishandling rule applies only after the Postal Service has made its delivery to the procuring installation and there is then some mishandling by Government personnel which prevents the bid from arriving at its ultimate destination prior to bid opening. Kessel Kitchen Equipment Co., Inc. B-189447, October 5, 1977, 77-2 CPD 271.

Here, it is obvious from the protester's submission that the late delivery of its proposal was not due to Government mishandling. Since there is no other basis for considering the proposal, we must conclude that the agency properly rejected Foundation's proposal. Moreover, as it is clear from the protester's submission that the protest is legally without merit, we have decided the matter without obtaining a report from the agency. See H. Oliver Welch & Co., B-193870, February 9, 1979, 79-1 CPD 96.

The protest is summarily denied.

Milton J. Aowlan

Acting Comptroller General
of the United States