

**DECISION**



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

**FILE:** B-211047

**DATE:** April 1, 1983

**MATTER OF:** Nikon Inc.

**DIGEST:**

Bid dispatched by other than registered or certified mail 4 days before opening, which is received late due to adverse weather conditions and not as a result of mishandling after receipt at the Government installation, is properly rejected.

Nikon Inc. protests the rejection of its bid by the General Services Administration under solicitation No. YGS-G-36409-N-2-14-83. GSA rejected the bid for surveying equipment on grounds that it was received late. We deny the protest.

Nikon dispatched its bid to GSA in Washington, D.C. by means of "special delivery" by the U.S. Postal Service. Although postmarked February 10, 1983, the bid was not received until February 15. Nikon, which is located in Garden City, New York, argues that the bid arrived after the due date of Monday, February 14 as a result of a severe snowstorm on Friday, February 11 that suspended all movement between New York and Washington, D.C.

Nikon contends that its bid should not be rejected as late because the delay was caused by an unforeseen act of God and because rejection would impose a hardship on the firm and deprive the GSA of access to Nikon's "unique and sophisticated instrumentation."

The solicitation in question included the standard Federal Procurement Regulations (FPR) clause providing that:

"(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:

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

See FPR § 1-2.201(a)(31) (amend. 193, July 1978). The term "Government installation" refers to the procuring activity and not a U.S. Post Office. Phelps-Stokes Fund, B-194347, May 21, 1979, 79-1 CPD 366. Unless the specific conditions in the solicitation for consideration of late bids are met, as a general rule the bidder assumes the risk that the bid will arrive late and be rejected. Sigma Treatment Systems, B-207791, June 21, 1982, 82-1 CPD 613.

When it appears that inclement weather will prevent timely delivery of bids or proposals, we have held that it is appropriate for a bidder or offeror to request extension of the due date. See generally Falcon Research & Development Co., B-188321, May 4, 1977, 77-1 CPD 306 (upholding rejection of a hand-carried proposal that was received late because the offeror was unable to use public roads or obtain air transportation from Buffalo, New York, during a blizzard). Although the FPR contains no comparable provision, we note that the Defense Acquisition Regulation (DAR) also gives the contracting officer discretion to postpone opening if he believes that the bids of an important segment of bidders have been delayed in the mail for causes, such as weather, that are beyond their control. DAR § 2-403.2 (DAC 76-17, September 1, 1978).

Obviously, however, bidders must request and contracting officers must decide on such extensions before the actual date for opening, notifying other bidders or offerors if practicable. See CompuServe, 58 Comp. Gen. 573 (1979), 79-1 CPD 393. To accept a late bid or proposal without advising other competitors of a new opening date would tend to subvert the integrity of the system. Id.

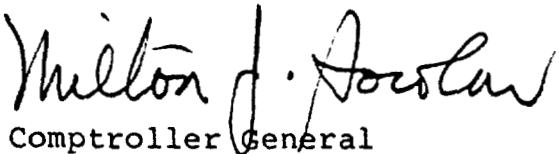
B-211047

In Nikon's case, the storm occurred on a Friday, and Federal offices in Washington, D.C. were closed about noon; all were officially open, however, on Monday, February 14, the scheduled opening day. Nikon did not request an extension until 2 days later, when it learned that its bid had not been timely received. Under these circumstances, it appears that any extension would have been for the benefit of only one bidder, and the contracting officer therefore could not have granted the request. Ecology and Environmental, Inc., B-188354, June 15, 1977, 77-1 CPD 428.

Since Nikon's bid was not dispatched by registered or certified mail; since dispatch occurred, in any case, less than 5 days before the date specified for receipt of bids; and since the delay was not caused by the Government after receipt at GSA, Nikon's bid was properly rejected.

While the strict application of the rules for late bids or proposals may lead to harsh results, to ensure fair and impartial treatment of bidders and avoid confusion, the Government must conduct its procurements in accord with clearly defined standards that apply equally to all. Phelps-Stokes Fund, supra. Therefore, our Office has denied protests concerning rejection of late bids even though they allegedly offered significant advantages to the Government. Id.

The protest is denied.

for   
Comptroller General  
of the United States