

**DECISION**

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

0-26037

FILE: B-212619

DATE: August 23, 1983

MATTER OF: Nickens and Associates

**DIGEST:**

Attempt to deliver proposal prior to opening via express mail does not provide a basis for consideration of late proposal where there is no evidence that the unsuccessful attempt resulted from Government action.

Nickens and Associates (Nickens) protests the refusal of the Bureau of Indian Affairs (BIA) to consider Nickens' proposal under request for proposals (RFP) BIA-MOO-83-14 for a cultural resources survey. Nickens contends that but for Government mishandling, the proposal would have been received on time.

The RFP was issued on June 15, 1983, and required that proposals were to be received by 4:30 p.m., local time, Friday, July 8, 1983, at the address provided. Nickens' proposal was not time/stamped until the following Monday morning, July 11 at 8:20 a.m. The contracting officer considered the proposal to be late and did not accept it. He informed Nickens of this decision in a letter dated July 26.

The protester sent its proposal via United States Postal Service express mail. According to the express mail label a delivery was attempted on July 8, 1983, at 8:10 a.m., but the actual date and time of delivery was July 11, 1983, at 8:15 a.m. The protester argues that since the Postal Service attempted delivery several hours prior to the closing time for receipt of proposals, the proposal should be considered.

It is clear from Nickens' initial submission that the protest is without legal merit. Therefore, we are deciding the matter without further development. Walker's Royal Incorporated, B-200583, October 20, 1980, 80-2 CPD 301.

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Late bids and proposals may only be considered if when sent by mail (or telegram if authorized) it is determined that the late receipt was due solely to Government mishandling after receipt at the installation or the bid or proposal is sent by certified or registered mail 5 calendar days prior to opening. KOH Management and Computer Systems, Inc., B-208683, August 31, 1982, 82-2 CPD 197.

Before we can consider if there has been Government mishandling, the time of receipt of the proposal at the Government installation must be established. The only acceptable evidence to establish time of receipt is the installation's time/date stamp on the bid or proposal wrapper or other documentary evidence maintained by the installation. Standard Mfg., Inc., B-209575, March 7, 1983, 83-1 CPD 216.

The protester points out that the express mail label clearly indicates that Postal Service had attempted delivery to the BIA at 8:10 a.m., July 8. However, Nickens does not give the reason why the attempt was unsuccessful and the label indicates the date of delivery to be 8:15 a.m., July 11. There is no evidence that the proposal was in the possession of the Government from July 8 to July 11, or that the unsuccessful delivery attempt resulted from Government action. Since the only documentary evidence of the time of receipt is the proposal envelope, we have no basis on which to conclude the proposal was received before the closing time for receipt of proposals.

Express mail is not the equivalent of registered or certified mail. KOH Management and Computer Systems, Inc., supra. In any event, Nickens mailed its bid less than 5 days before the closing date. The offeror that chooses express mail assumes the risk of late delivery. Aetna Supply, Inc., B-203002, June 8, 1981, 81-1 CPD 462.

Accordingly, the protest is denied.

*for* *Harvey D. Jan Elmer*  
Comptroller General  
of the United States