

**DECISION**

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

27209

**FILE:** B-211617**DATE:** January 17, 1984**MATTER OF:** Eliscu & Company, Inc.**DIGEST:**

Where only documentary evidence as to time of receipt of bid at government installation shows it was received after bid opening, it is not necessary to reach issue of government mishandling.

Eliscu & Company, Inc. protests the rejection of its bid as late by the District of Columbia Department of General Services under invitation for bids (IFB) No. 0038-AA-83-1-3-EJ for assorted textiles and dressmaking supplies. Eliscu contends that its bid was received late at the office designated for receipt of bids because of mishandling by the District. We deny the protest in part and dismiss it in part.

The protester's bid was sent by the United States Postal Service Express Mail on January 7 and the bid envelope shows that it was stamped received by the District at 9:53 a.m. on January 13, 1983. Since the bid was not received at the designated office in time for the scheduled bid opening at 10:00 a.m. on January 11, it was rejected.

Eliscu contends that its bid was mailed in sufficient time to insure arrival in time for bid opening. The protester states that it is the opinion of the two Postal Service employees that it questioned that the bid was "delivered on time" but was mishandled by the District's mailroom personnel. Eliscu also implies that the District may have contributed to the late delivery of its bid by instructing the Postal Service to deliver the mail to a different location than that specified in the solicitation.

123218  
027602

The solicitation provided that no bid received after the bid opening time would be considered "except that when a bid arrives by mail after the time fixed for bid opening, but before award is made, and is shown to the satisfaction of the Procurement Officer that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered." Further, the regulations provide that a bid received after bid opening but prior to award may be considered if it is determined that late receipt was due to agency mishandling at the agency installation. Material Management Manual (MMM) § 2620.9C.1A(b).

The protester does not contend that the late receipt was due to delay in the mail and we do not believe that the elements needed to show agency mishandling of Eliscu's bid are present here.

In order to successfully argue that a bid was late due to government mishandling, the bidder must establish that the agency received the bid before bid opening. The only acceptable evidence of receipt at the government installation is the time/date stamp or other documentary evidence maintained by the installation. MMM § 2620.9 C.1A(b); Standard Mfg. Inc., B-209575, March 7, 1983, 83-1 CPD 216. Here, the only documentary evidence of receipt at the agency installation is the stamp on the bid envelope which shows that the bid was received after bid opening. Consequently, we need not reach the issue of government mishandling because we have no basis to conclude that the agency received the bid envelope before bid opening. Tom Shaw, Inc., B-209018, February 3, 1983, 83-1 CPD 123. The fact that all mailed bids were first routed to the District's central mailroom instead of being accepted at the bid opening location designated on the bid envelope is simply not relevant here since the protester is unable to document when the envelope was received in that mailroom.

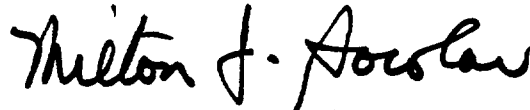
Eliscu also contends that the contract award was improper because the awardee is not a regular dealer for the required items. Our Office does not consider issues as to whether a bidder is a regular dealer or manufacturer

B-211617

within the meaning of the Walsh-Healey Act, since such matters are by law for the contracting agency's determination, subject to final review by the Department of Labor. J.F. Barton Contracting Co., B-210663, February 22, 1983, 83-1 CPD 177.

Finally, Eliscu contends that because the solicitation contemplated a 1-year contract, the District received higher bid prices than would be the case if the District were to make several purchases for smaller quantities during the course of the year. Eliscu's contention that the solicitation is defective in this respect will not be considered. The alleged defect here was apparent from the face of the solicitation. Under these circumstances, Eliscu was required by our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), to file its protest on this basis prior to bid opening. Since Eliscu did not file its protest until approximately 4 months after bid opening, the protest on this basis is clearly untimely.

The protest is denied in part and dismissed in part.

A handwritten signature in black ink, reading "Milton J. Aroskar". The signature is written in a cursive, flowing style.

Acting Comptroller General  
of the United States