

DECISION



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

FILE: B-220917

DATE: January 23, 1986

MATTER OF: Data Monitor Systems, Inc.

DIGEST:

1. Bid received after bid opening may not be considered on ground that late receipt was due to government mishandling where contracting activity's failure to pick up protester's express mail bid package received at the United States Postal Service (USPS) facility on a Saturday was due to failure by USPS to notify contracting activity that the package was available for pickup.
2. Protester fails to show that late receipt of its bid was due to government mishandling where the only evidence the protester presents--a letter from the USPS stating that protester's express mail bid package had been made available for pickup by the contracting activity before bid opening--is disputed by the contracting activity which asserts, based on employee affidavits and mail log, that it was not available for pickup until the day after bid opening.

Data Monitor Systems, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. N00612-85-B-0493, issued by the Naval Supply Center (NSC), Charleston, South Carolina, for operation of a word processing center at the Navy Supply Corps School, Athens, Georgia. The protester contends that it was improper to reject its bid since the bid was received late due solely to mishandling by NSC. We deny the protest.

The IFB was issued on August 14, 1985, with an original bid opening date of September 13 at 2 p.m. Three amendments to the IFB subsequently were issued, with bid opening finally set for Monday, October 7 at 2 p.m. The protester states that it mailed its bid, properly addressed

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to the location listed in the IFB, on October 3 at 3 p.m., via United States Postal Service (USPS) express mail. The bid package was received at the USPS facility which serves NSC on Saturday, October 5. The express mail label on the bid package shows a notation by the USPS employee responsible for the bid package that he attempted delivery at 6:10 a.m. on October 5. The Navy states that, in a subsequent telephone conversation with an NSC official, the USPS employee stated that he telephoned the Transportation Office at NSC to advise that the package had arrived. According to the Navy, that Office is closed on weekends; as a result, he received no answer to his call.

All mail addressed to NSC is held for pickup by NSC at the USPS facility, located approximately one mile away. NSC's normal procedure on weekdays is for a mail clerk to make two trips daily, one in the morning, one in the early afternoon, to collect the mail and transport it to NSC. On Monday, October 7, the NSC employee who usually picks up the mail was absent; his replacement was another mail clerk who had performed the task 75 to 100 times over the past 3 years. According to an affidavit by the substitute mail clerk, submitted by the Navy, she made two trips to the USPS facility on October 7, at approximately 8 a.m. and 2:30 p.m. She states that express mail normally is placed on a particular table in the USPS facility, separate from the regular mail and other "accountable" mail (certified, registered, and insured mail). The mail clerk concludes that she saw no express mail on the table during either trip to the USPS facility, and that therefore no express mail was received by NSC that day.

On October 8, the protester's bid package was picked up by the NSC mail clerk during the morning trip to the USPS facility. Because bids were due on October 7, the contracting officer rejected the protester's bid as late.

A bid received after bid opening may be considered where government mishandling in the process of receipt is the paramount cause of the bid being received late. Sun International, B-208146, Jan. 24, 1983, 83-1 CPD ¶ 78. Here, the protester contends that it was improper for NSC to reject its bid because the late receipt of the bid was due to NSC's failure to pick up the package in a timely fashion. The Navy disagrees, arguing that USPS failed to notify NSC or otherwise make the bid package available for pickup until October 8, the day after bid opening. We find that the protester has failed to establish that mishandling by NSC was the paramount cause of the late receipt of the bid.

With regard to the attempt at delivery on Saturday, October 5, the Navy states that the standard procedure at NSC calls for mail delivered by commercial carriers on weekends to be accepted by the NSC watch officers in the duty room, which is staffed 24 hours a day. Unlike the commercial carriers, however, USPS holds express mail for pickup by NSC; it will not deliver it directly to NSC. According to an affidavit by the senior watch officer at NSC, the duty room personnel would try to arrange for express mail to be picked up on the weekend at the USPS facility if they were advised by USPS that express mail had arrived. The parties agree that a USPS employee telephoned the NSC Transportation Office, not the duty room, on Saturday morning, October 5, in an attempt to advise NSC that the bid package was available for pickup. According to the Navy, the Transportation Office is not staffed on the weekends, and, as a result, the USPS employee's call was not answered. The parties also agree that no other attempt to contact NSC was made that day.^{1/}

The package was not picked up by NSC on October 5 due to the failure by USPS to notify NSC that the package had arrived. The USPS employee tried only once to reach NSC, and called the Transportation Office, which was not open on the weekend, rather than the duty room. There is no indication that the USPS employee had been advised by NSC to call the Transportation Office when express mail arrived on the weekend,^{2/} or that USPS was otherwise misinformed by NSC regarding its procedures for weekend delivery of express mail. As a result, we find that the failure to deliver the bid package on October 5 cannot be attributed to government mishandling. See Minority Business Enterprises, Inc., B-211836, May 31, 1983, 83-1 CPD ¶ 583 (exception permitting consideration of late bid due to government mishandling refers to mishandling by the contracting activity, not USPS). Moreover, even if the failure to deliver the package on October 5 could be attributed to NSC's failure to inform USPS of its weekend

^{1/} While a letter from a USPS official submitted by the protester in support of its position, discussed further above, states that the USPS employee called NSC twice on October 5, the protester does not contend, and there is no other evidence, that a second call was made.

^{2/} Subsequent to the filing of the protest, the USPS employee was advised to call the duty room for pickup of express mail on the weekend.

procedures, USPS had another opportunity to deliver the package on Monday, October 7. As discussed further below, the protester has not shown that the failure to deliver the package on October 7 was due to mishandling by NSC rather than USPS.

The protester contends that the NSC mail clerk failed to pick up the bid package from the USPS facility on Monday, October 7. In support of its position, the protester has submitted a letter signed by the USPS Sectional Center Director for Customer Services in Charleston, South Carolina. In reliance on the USPS letter, the protester maintains that all the accountable mail for NSC is kept together at the USPS facility, and that the NSC mail clerk failed to collect any accountable mail, including the protester's express mail bid package, on October 7.

The Navy disagrees, and has submitted an affidavit from the NSC mail clerk stating that she checked the table where express mail for NSC is usually kept at the USPS facility, but found no express mail there on either of her two trips to the facility on October 7. The Navy also submitted an affidavit from the mail clerk who normally picks up mail at the USPS facility, confirming that express mail is kept on a particular table at the facility, separate from other accountable mail. In addition, the Navy filed an affidavit from the clerk responsible for logging mail received at NSC which, together with the clerk's actual log for October 7, shows that some accountable mail was received by NSC that day, contrary to the protester's assertion.

The key issue in the protest is a factual one--whether USPS placed the protester's express mail bid package in the usual location for pickup by NSC on October 7. The protester's position--that the package had been left in the usual location but was not collected by the NSC mail clerk--is based solely on the statements in the USPS letter that all accountable mail is kept together at the USPS facility, and that none was picked up by NSC on October 7. In contrast, the Navy has submitted an affidavit from the mail clerk stating that she checked but found no express mail for NSC at the USPS facility that day. In addition, the Navy has established that, contrary to the protester's assertion, some accountable mail was picked up by the mail clerk and delivered to NSC on October 7. In our view, this casts further doubt on the accuracy of the crucial remaining assertion in the USPS letter that the bid package was available on October 7 together with the other accountable mail but was not picked up.

Under these circumstances, we find that the protester has not shown that the bid package was available in the usual location for express mail for pickup by the NSC mail clerk on October 7. At best, the record reflects an irreconcilable conflict between the protester and the Navy over the factual issue, and we therefore conclude that the protester has not met its burden of proof to establish the facts it alleges. See E.M. Brown, Inc., B-218375, June 17, 1985, 85-1 CPD ¶ 691. Since the protester has not shown that the late receipt of its bid was due to mishandling by the contracting activity, the bid properly was rejected.

The protest is denied.

for Seymour E. Guss
Harry R. Van Cleve
General Counsel