

Maeder



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southeastern Enterprises Incorporated

File: B-237867

Date: March 21, 1990

Aubrey J. Hamilton, for the protester.
P. E. Zanfagna, Jr., Marine Corps, for the agency.
Jacqueline Maeder, Esq. and John F. Mitchell, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contracting agency properly rejected a proposal sent via U.S. Postal Service Express Mail on the day before the date for receipt, but received late at the location designated in the solicitation, where: (1) none of the circumstances under which the solicitation permitted consideration of late proposals applied, and (2) agency's once-a-day pickup of mail from local post office box did not constitute mishandling in the process of receipt where protester's failure to mark Express Mail envelope with solicitation number and deadline for receipt of proposals may have contributed to the delay.

DECISION

Southeastern Enterprises Incorporated protests the rejection of its offer as late and any award of a contract under request for proposals (RFP) No. M00264-89-R-0017, issued by the Marine Corps Combat Development Command (MCCDC), Quantico, Virginia, for food services. Southeastern contends that its proposal should be considered by MCCDC because the proposal's late receipt was the result of government mishandling.

We deny the protest.

Proposals were required to be addressed to the Purchasing and Contracting Division, P.O. Box 1395, MCCDC, Quantico, Virginia, or if handcarried, delivered to MCCDC's depository located in Building 2010. Proposals were due Friday, November 3, 1989, at 4:30 p.m., by which time 16 proposals

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were received. Southeastern mailed its proposal by U.S. Postal Service Express Mail at 2:06 p.m., on November 2. It addressed the envelope:

Purchasing and Contracting Div.
BLDG #2010
MCCDC
Quantico, Virginia 22134-1395

Although the proposal was received at the Quantico post office sometime between approximately 9 a.m. and 2 p.m., on Friday, November 3, the Postal Service did not attempt to deliver the proposal package to Building 2010. Rather, pursuant to standard procedure, a postal employee placed in the appropriate MCCDC post office box a notice that a package had arrived. Another employee made a courtesy call at 2:50 p.m. on November 3 to the Purchasing and Contracting Division at MCCDC to inform it that an Express Mail package had arrived at the post office. Southeastern argues that, since a representative of the post office contacted the Purchasing and Contracting Division to inform it that there was an Express Mail package at the post office and because proposals under this procurement were due on that date and it was customary for the Purchasing and Contracting Division to pick up its own mail, the Division "had ample time [before 4:30 p.m.] that day to get the Express Mail," presumably by dispatching a courier to pick up the package.

The agency reports that the Purchasing and Contracting Division shares the services of a courier who works for the Materiel Branch, another MCCDC group located in Building 2010, and who routinely picks up the mail from the Quantico post office once each day between 8:00 a.m. and 9:00 a.m. Following this standard procedure, the courier picked up the mail on Friday morning, November 3, at which time the protester's package was not there. During his normal pickup the following Monday, November 6, the courier signed for the protester's Express Mail package at 8:30 a.m., and delivered it to the Purchasing and Contracting Division that morning.

Under the April 1984 late submission provision contained in this RFP, a late proposal may only be considered if it was received before contract award and it: (1) was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers or (2) was sent by mail and it is determined by the government that the late receipt was due solely to government mishandling after receipt at the government installation or

(3) is the only proposal received. Federal Acquisition Regulation (FAR) § 52.215-10.1/ Southeastern's late proposal was rejected by the agency because none of the above exceptions applied.

We agree that none of these exceptions applies here. Express Mail is not considered certified or registered mail for purposes of the first exception, Moltech Corp., B-236490, Oct. 1, 1989, 89-2 CPD ¶ 340, and, in any event, Southeastern's proposal was not mailed until the day before the date specified for receipt of proposals. The second exception does not apply because the proposal was already late when it was received at the government installation, which, within the context of the late submissions clause, means the local agency office, not the local post office. Nuaire, Inc., B-221551, Apr. 2, 1986, 86-1 CPD ¶ 314. Finally, the third exception also does not apply because 16 proposals, rather than just one, were timely received.


There are situations not covered under the late bid clause that justify consideration of a late bid. A bid or offer received after opening may be considered where there was government mishandling in the process of receipt (as distinguished from mishandling after receipt) that was the paramount cause of the bid or offer being late. Nuaire, Inc., B-221551, supra. Government mishandling of an offer delivered to a post office box may be found where the agency fails to employ procedures designed to permit timely delivery of the offer to the contracting officer within a reasonable time before the time specified for receipt of proposals. Id.

In this case, government mishandling in the process of receipt was not the paramount cause of the Marine Corps' failure to receive Southeastern's proposal prior to the due date because the record suggests that Southeastern may have significantly contributed to the delay. When a bid or proposal is placed in an Express Mail envelope or pouch provided by the carrier for overnight delivery, the information required by the solicitation to be shown on the

1/ FAR § 52.215-10 now contains a specific exception for U.S. Postal Service Express Mail which states that a late proposal may be considered if it was mailed not later than 5 p.m. at the place of mailing 2 working days prior to the date specified for receipt of proposals. (FAC 84-53). This December 1989 provision, was not in effect when the RFP was issued. In any event, the protester mailed its proposal by Express Mail only 1 day, rather than 2 days, before the date specified for receipt of proposals.

envelope as to the solicitation number and date and time by which offers must be received may no longer be apparent from the outside envelope. An offeror's failure to assure that this required information is on the envelope can be a contributing factor to any delay in delivery. Systems for Business, B-224409, Aug. 6, 1986, 86-2 CPD ¶ 164. Here the record indicates that the protester's Express Mail envelope did not contain this information, and in the absence of that information those in Quantico could not know that the package contained a proposal or the deadline for proposal submission. Accordingly, we must conclude that the protester contributed to the delay in delivery and must bear the consequences of the late delivery of its proposal.

The protest is denied.

for 
James F. Hinchman
General Counsel