

Jones 143567



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Winston Corporation

File: B-243394

Date: April 8, 1991

Lawrence W. Luecking for the protester.
Charles W. Morrow, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Late bid on overseas procurement can only be accepted if it is determined that the late receipt was due solely to mishandling by the government after receipt at the government installation; this does not include alleged mishandling by the Postal Service.
2. Late bid cannot be accepted as a modification to an otherwise successful bid, since the definition of an otherwise successful bid is the low bid received at the time of bid opening.

DECISION

Winston Corporation protests the rejection of its bid as late under invitation for bids No. N62766-90-B-2011, issued by the Naval Facilities Engineering Command, for painting various facilities in Guam.

We dismiss the protest.

Winston asserts that its bid should be considered because it was sent "First Class" postage to Guam from Denver, Colorado, by the United States Postal Service on March 6, 1991, more than 7 days before the March 13 bid opening. Winston argues that the Federal Acquisition Regulation (FAR) permit consideration of late bids, where the bid was sent by the Postal Service, if it is determined that the bid was mishandled by the government or if the bid offers terms that are the most favorable to the government. Winston argues that the Navy improperly rejected its bid because the bid was clearly mishandled by the Postal Service and since it represented the most favorable bid to the government.

The only exception permitted for considering late bids on overseas procurements, whether sent first class, registered, or certified mail, is where it is determined by the government that the late receipt of the bid was due solely to mishandling by the government "after receipt at the Government installation." FAR § 52.214-32(a); Kentucky Bridge & Dam, Inc., B-240484, Nov. 19, 1990, 70 Comp. Gen. ___, 90-2 CPD ¶ 405. Thus, the bid package must be delivered to the contracting agency installation before the mishandling contemplated by the clause can occur; that is, mishandling by the "government" under this clause does not include mishandling by the Postal Service. Id. Since Winston does not allege mishandling by the contracting activity, its bid was properly rejected as late. See Machine Research Co., Inc., B-230188, Mar. 2, 1988, 88-1 CPD ¶ 224.

While Winston argues that the Navy should have considered the bid because it offered the government the most favorable terms, this exception is only applicable to late modifications of otherwise successful bids. FAR § 52.214-32(d). The definition of an otherwise successful bid is the low bid received at the time of bid opening, which otherwise would be in line for the award notwithstanding a late modification, Winston does not fall under this exception, even assuming its bid would have been low. See Medasys, Inc., B-236740, Sept. 7, 1989, 89-2 CPD ¶ 223.

Therefore, Winston's bid, submitted after the designated time for bid opening, was properly rejected.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel