

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

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FILE: B-183427

DATE: May 29, 1975

MATTER OF: Embassy Dairy

DIGEST:

Protest against acceptance by District of Columbia of late bid sent by certified mail on Friday but delivered after bid opening at 10 a.m., Monday, is sustained, as evidence indicates lateness in instant case occurred under normal, established Postal Service procedures where agency's mail-room was closed Saturday and Sunday. Contention by late bidder that bid is not late if received at any time on bid opening day is rejected as contrary to District of Columbia Material Management Manual. It is recommended, however, that District adopt FPR procedure for treatment of late bids.

The District of Columbia issued invitation for bids (IFB) No. 0001-AA-89-0-6-K1 on February 3, 1975, for a term contract covering the period of July 1, 1975, through June 30, 1976, for milk, cream and related items for all District of Columbia agencies including public school cafeterias. Bids were opened at 10 a.m. on March 3, 1975. By letter dated March 13, 1975, Embassy Dairy (Embassy) timely protested to our Office against the contracting officer accepting a late bid submitted by Shenandoah's Pride Dairy (Shenandoah).

Of 10 prospective bidders mailed invitations, Embassy submitted the only bid received by the time of bid opening. Shenandoah's bid, sent by certified mail on February 28, 1975, was received by the mail-room after 10:00 a.m., March 3, 1975. The bid opening official initially recommended that Shenandoah's late bid not be considered. However, as a result of evidence presented by Shenandoah in the form of the original receipt for certified mail postmarked February 28, 1975, Springfield, Virginia, and signed "11:00 A.M. F. Gammon", the bid opening official reversed his recommendation. However, no award has yet been made.

In its March 13, 1975 letter, Embassy contends that acceptance of Shenandoah's bid would be in violation of the Federal Procurement Regulations (FPR), which require rejection of late bids submitted by certified mail unless sent at least five calendar days prior to the date specified for bid opening, or subject to other conditions not present in the instant case. See FPR §§ 1-2.303 and 1-2.201(a) 31 (1974 ed.).

However, as correctly noted by the purchasing agent having cognizance of this procurement, the Federal Procurement Regulations are not mandatory for the District of Columbia, B-173519, September 27, 1971, and the applicable regulations governing the procurement are found in the District of Columbia Material Management Manual (DCMM) (1974 ed.). DCMM Part I, Procurement Management, Section 2620.9, which sets forth the rules regulating late bids, provides in pertinent part:

"2620.9 LATE BIDS

A. General

Bids received at the office designated in the Invitation for Bids after the exact time set forth opening of bids are late bids. Late bids shall not be considered for award except as authorized in this paragraph.

* * * * *

C. Mailed Bids

1. Circumstances permitting acceptance

A late mailed bid received before award may be considered for award only if:

- a. It was sent by registered mail or by certified mail for which an official dated Post Office stamp (postmark) on the original Receipt for Certified Mail has been obtained, and it is determined that the lateness was due solely to a delay in the mails (based on evidence obtained and for which the bidder was not responsible)."

In this regard, Embassy contends that the lateness of Shenandoah's bid was not due solely to a delay in the mails. In support of this contention, Embassy has submitted a letter from the District Manager, Capital District, United States Postal Service, which explains that the Shenandoah bid arrived at the Washington, D.C. Post Office Friday evening February 28, 1975, and delivery was not attempted on Saturday,



March 1, 1975, because the building at which delivery was to be made was closed. As Sunday, March 2, 1975, was not a delivery day, delivery was made during the first trip on Monday, March 3, 1975. In response, the contracting officer stated that the building was open on Saturday, March 1, 1975 until 1 p.m., although the mailroom was closed. The contracting officer also states that Shenandoah's bid "would have been delivered on Saturday, March 1, 1975 had the mailroom been open."


We have been advised by a responsible Postal Service official that under normal, established Postal Service procedures, delivery of Shenandoah's bid would not have been made on Saturday, March 1, 1975, even though the building was opened, as the mailroom was closed. Our past decisions have held that lateness may not be found to be "due solely to a delay in the mails" in instances where normal procedures established by the Postal Service for the particular type of mail were carried out within the time contemplated, even where the general public and not all postal employees were aware of the procedures. B-173559, September 30, 1971; B-174614, December 14, 1971. It appears that in the circumstances of the instant case receipt of the Shenandoah bid by the bid opening official was not timely under normal, established Postal Service procedures for delivery of certified mail. While the D.C. Government obtained a confirmation from a Postal Service official to the effect a bid mailed on February 28, 1975, by certified mail from Springfield, Virginia, should have been received at the bid mailroom by the time of bid opening, we do not find such confirmation persuasive as it appears that the Postal official was not cognizant of the building and mailroom hours. Therefore, we are unable to find that late receipt of the Shenandoah bid was "due solely to a delay in the mails," as required by DCMMM § 2620.0(C)(1)(a).

By letter dated April 8, 1975, Shenandoah argues in support of the contracting officer's acceptance of its late bid, contending that it is the practice in the District of Columbia and in many other jurisdictions to allow bids to remain open until the close of business on bid opening day. Shenandoah further contends that this alleged practice "has the sanctity of custom, and therefore is generally accepted as law." However, these contentions are clearly contrary to the language of DCMMM § 2620.9, supra, which unambiguously states that bids received after the exact time set for opening of bids are late bids, which may not be considered for award except as authorized within the paragraph.

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Accordingly, the protest against acceptance of the late bid is sustained.

Finally, we are suggesting to the District of Columbia that consideration be given to adopting a regulation in conformity with FPR § 1-2.201(a)(31), supra, concerning the treatment of late bids.



Deputy Comptroller General
of the United States