

David Hasfurth  
PL 1

4075  
03910  
DECISION



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

FILE: 8-189447

DATE: October 5, 1977

MATTER OF: Kessel Kitchen Equipment Co., Inc.

DIGEST:

Late bid may not be considered for award even though sent by United States Postal Service Express Mail Service since ASPR § 7-2002.2 permits consideration of late bid only when sent by registered or certified mail or when late receipt was due solely to mishandling by Government after receipt at Government installation, circumstances which do not exist here.

Kessel Kitchen Equipment Co., Inc. (Kessel), protests the rejection of its bid by the Defense General Supply Center, Richmond, under invitation for bids No. DSA400-77-B-2576. The basis of rejection was that the bid was received by the contracting activity after the date set for bid opening and that none of the circumstances permitting consideration of late bids were present under the incorporated-by-reference invitation clause (paragraph 7-2002.2 of the Armed Services Procurement Regulation (ASPR) (1976 ed.)) regarding "Late Bids, Modifications of Bids, or Withdrawal of Bids."

The Kessel bid was sent, as shown on the "Express Mail Service Mailing Label" on the Kessel envelope, on June 16, 1977, at 4:50 p.m. by United States Postal Service "Express Mail Service." Kessel decided to send its bid in this manner because it was determined to be the safest and fastest method offered by the Postal Service. Kessel was advised by the Postal Service that if sent by certified mail the bid would arrive in Richmond in 3 days, if sent by registered mail in 2 days, and if sent by express mail in 1 day or less. Bid opening was at 11:15 a.m. on June 20. The bid was not delivered to the contracting activity until 8:20 a.m. on June 21. The Richmond Postmaster has advised that under normal circumstances the bid should have been delivered on June 17, but due to mishandling by the Postal Service it did not.

ASPR § 7-2002.2 provides, in pertinent part, that:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids, (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation."

Kessel maintains that because express mail is not addressed in the above-quoted ASPR provision, that provision does not preclude the exercise of reasonable judgment in reviewing this case nor does it establish any parameter for a decision. It is argued that since certified and registered mail require 2 and 3 days, respectively, for delivery, and since express mail is the newest and fastest (1 day or less for delivery) of the mail services, less than 5 days should be permitted for mailing a bid using express mail for the purposes of the late bid provision. It is also the position of Kessel that the United States Postal Service is a part of the Federal Government and that since the Government was, through its mishandling of the bid, responsible for the delay in its receipt, the late bid should be considered. Finally, Kessel notes that it had no control over the bid once it was mailed and, consequently, would enjoy no special advantage over the other bidders if its bid were considered for award.

It is clear that under the applicable regulation a late bid may be considered only if sent by registered or certified mail in the manner outlined above or where "the late receipt was due solely to mishandling by the Government after receipt at the Government installation." (Emphasis supplied.) Since Kessel's bid was not sent by registered or certified mail "not later than the fifth calendar day prior to the date specified for the receipt of bids," it may not be considered under the first exception of the regulation. Further, ASPR § 7-2002.2 refers to

B-189447

mishandling by the Government installation at which the procurement is being made and not by the United States Postal Service. Therefore, Kessel's bid is not for consideration under the regulation. Since the regulation is specific as to the circumstances under which a late bid may be considered, we see no basis for the exercise of judgment in making such decision or for providing an exception for express mail.

Accordingly, we agree with the contracting activity in its determination that the late bid of Kessel cannot be properly accepted for consideration under ASPR § 7-2002.2 and the protest is therefore denied.

Deputy

  
Comptroller General  
of the United States