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**DECISION**



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

**FILE: B-190160**

**DATE: July 3, 1978**

**MATTER OF: Kleen-Rite Corporation**

**DIGEST:**

Certified mail receipt showing that acceptance was mailed within bid acceptance period establishes that valid award was made.

Kleen-Rite Corporation (Kleen-Rite) contests the validity of the award to it of a contract under IFB F28609-77-B-0050 for food services at McGuire Air Force Base (McGuire), New Jersey, and seeks a determination that no contract has been formed. Kleen-Rite argues that its bid was never effectively accepted. The Air Force contends that proper and timely award was made, and that Kleen-Rite is contractually bound.

Bids were opened on September 8, 1977 and Kleen-Rite's bid was the second lowest bid received. Both the apparent low bidder and Kleen-Rite were asked to verify their bids. Kleen-Rite did so on September 14, 1977, but the apparent low bidder sought permission to withdraw its bid due to an alleged mistake. Consequently, the contract award was delayed until a determination could be made regarding the apparent low bidder's request for withdrawal. Later, award was further delayed because another bidder had filed a protest with this Office.

The IFB specified that bids could be accepted for sixty days from bid opening and that award would be made in writing furnished to the successful bidder within the specified acceptance time. (See Standard Form 33A, March 1969, paragraph 10(d)). Since bids were opened on September 8, 1977 the bid acceptance period expired at midnight, November 7.

On November 1, 1977, the Air Force permitted the apparent low bidder to withdraw its bid. The following day, McGuire's procurement office requested authority to make an award prior to resolution of the protest pending before our Office. Authority was granted on November 7, 1977. That afternoon, the Air Force contends that written notification of the award was mailed to Kleen-Rite, and telephonic confirmation was made. Telegraphic confirmation followed on November 8.

Kleen-Rite argues that no contract was formed because the Air Force failed to make a valid award while its bid was open. It contends that the telephonic notice of award was ineffective because it was not in writing, and that both the written and telegraphic notices of award were ineffective because untimely. Kleen-Rite concludes that no contract has been formed. The Air Force admits that neither the telephone nor telegraphic communications constitute effective notice of award. However, it maintains that the letter of November 7, 1977 obligated Kleen-Rite because it was in proper form and timely mailed.

Initially, we note that the letter is a writing, thus in proper form to constitute a valid acceptance under the IFB. Kleen-Rite concedes propriety of form, but vigorously argues that there is insufficient evidence to support a conclusion of timely mailing. It contends that receipt of the letter in its offices at Avon, New Jersey, on November 10 (three days after expiration of the bid) supports an inference that the letter could not have been mailed on November 7 because mail dispatched from McGuire, according to U.S. Postal Service standards, is supposed to reach Avon in one day. It further argues that the postage meter stamp dated November 7, 1977, affixed to the envelope bearing the award letter, is not evidence of a timely mailing because, even after metering, the letter was still under McGuire's control.

Kleen-Rite's arguments are not persuasive. Despite the goals established by U.S. Postal Service standards, it is clearly possible in a particular instance for delivery of a piece of mail to take longer than one day. Any number of missteps can occur in the processing of a letter, resulting in delayed delivery. Further, the Air Force does not rely on the date of the postage

meter stamp to prove timely mailing. It has submitted its Receipt for Certified Mail, Postal Service Form 3877, which establishes dispatch of a letter bearing the same certified number as that on the envelope received by Kleen-Rite. The receipt is date-stamped November 7, 1977 with the official postal stamp of the Trenton, New Jersey Post Office, McGuire Air Force Base Branch. It is signed by a Postal Service employee, and its validity is further substantiated by affidavits submitted by the manager of the McGuire Post Office Branch, and the Air Force employee who dispatched the award letter and obtained the receipt.

Kleen-Rite asserts that this documentation is inadequate for several reasons. Initially, it sees a peculiarity in the procedure used to obtain the certified mail receipt. It believes that, because postal regulations prescribe use of the mailing book procedure (Form 3877) for certified mail receipts "if three or more letters are mailed at one time", use of such form in this instance, where only one item was mailed, is irregular. The protester concludes that McGuire's Form 3877 receipt is inadequate to establish timely mailing of award. Apparently, Kleen-Rite's position is that only the traditional red and white slip receipt (Postal Service Form 3811) can establish timely mailing in this case.

Although Kleen-Rite remains unconvinced by the receipt, we do not. As the Post Office manager explained in an affidavit supporting the validity of a Form 3877 mail receipt, large businesses with a heavy volume of certified mail customarily employ this form. It is suitable for a heavy mail volume because up to 15 items can be receipted on just one page of the holder's receipt book. Although Kleen-Rite's award letter was the only piece of mail dispatched on this particular mail run, the fact that a form better suited for several items of mail was used in no way reduces its value as evidence that the acceptance was posted on November 7. In this connection, we note that the United States Postal Service Manual, 39 C.F.R. Part 168.45, provides the Form 3877 sheets become the sender's receipt.

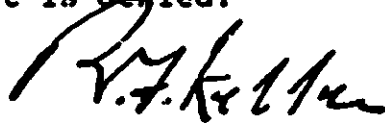
Since we have determined that the Air Force established posting of acceptance within the bid acceptance period we need not consider Kleen-Rite's additional

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arguments, all of which attempt to cast doubt on whether a timely acceptance was posted. We find that a contract was formed between McGuire and Kleen-Rite.

Accordingly, the protest is denied.



Deputy Comptroller General  
of the United States