

PL-06

DECISION



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

10,679

FILE: B-195287

DATE: July 9, 1979

MATTER OF: A&W Products Company, Inc.

[Protest of Late Bid Rejection]

Dub 02053

DIGEST:

Protester's late bid was properly rejected by contracting officer since bid was sent by "special delivery" and not by certified or registered mail, absent showing that bid was mishandled by agency after its receipt.

A&W Products Company, Inc. (A&W), protests the rejection of its bid as late by the General Services Administration (GSA) under invitation for bids (IFB) No. FCGO-E1-50153-A.

The time set for bid opening was 11:00 a.m., May 30, 1979. A&W sent its bid via the United States Postal Service, by "special delivery" mail, to GSA on May 26, 1979, which was guaranteed to be delivered in time for bid opening. However, A&W's bid was not received by GSA until 4:22 p.m., some 4 hours after bid opening.

A&W does not dispute the fact that its bid was received late. However, A&W contends that its bid should not be rejected because of mishandling by the Postal Service and award should be made to it as the lowest bidder.

Standard Form (SF) 33A, "Solicitation Instructions and Conditions," was incorporated into the solicitation. Clause 7, "Late Bids, Modifications of Bids, or Withdrawal of Bids," of SF33A states in pertinent part:

*late bids
mail delivery post
postal service*

~~005801~~

"(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:

"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for 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

"(2) 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."


It is our view that the rejection of A&W's bid by the contracting officer was proper. A&W's bid, in order to be properly considered, should have been delivered to the designated office prior to the time specified for bid opening, but it was not received until after bid opening. Our Office has consistently held that a bidder has the responsibility to assure timely arrival of its bid and must bear the responsibility for its late arrival. Late receipt of a bid will result in its rejection unless the specific conditions of the IFB are met. H. Oliver Welch & Company, B-193870, February 9, 1979, 79-1 CPD 96.

Under the terms of the IFB a late bid may be considered if sent by registered or certified mail in the manner outlined above, which is not the case here, or where the "late receipt was due solely to mishandling by the Government installation" issuing

the procurement. The Postal Service's failure to deliver the bid does not constitute Government mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.

Our Office generally requests a report from the procuring agency upon receipt of a bid protest in accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1978). However, where it is clear from a protester's submission that the protest is legally without merit, we will decide the matter on that basis. H. Oliver Welch & Company, supra.

Therefore, the protest is summarily denied.


Deputy Comptroller General
of the United States