



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

April 27, 1981

B-202729

[Rejection of Bid for Lateness]

The Honorable Jake Garn
United States Senate

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Dear Senator Garn:

DLC 066045

We refer to your inquiry on behalf of R. B. Garner, President of Mountain States Security and Investigation, Inc., concerning the Internal Revenue Service's rejection of that firm's bid as late under a solicitation to provide security services for the Ogden, Utah IRS facility. Mr. Garner believes the Mountain States' bid should be considered because the late submission was due to foggy conditions at Washington's National Airport which he asserts prevented a timely delivery of the bid by Federal Express. Mr. Garner believes this Act of God excuses the late delivery under a theory of tort (negligence) law. We do not agree.

The legal principles governing the submission of bids in federal procurements are those concerned with federal procurement law, not those associated with the law of negligence. Under federal procurement law, unless there has been some improper Government action which causes late delivery, late bids may not be accepted unless they meet the conditions of the late bid clause normally included in every federal solicitation. That clause does not permit the acceptance of a late hand-carried bid (delivery by a carrier other than the Postal Service is considered to be a hand-carried bid) under any circumstance, unless it was the only bid received. Thus, unforeseen circumstances, such as an Act of God, would not permit acceptance of a late hand-carried bid.

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We of course recognize that the strict application of this rule may at times appear harsh. Yet, the responsibility of ensuring that a bid arrives on the proper date and time and the method of delivery utilized to achieve that result must ultimately be borne by the bidders if all who deal with the Government in the conduct of its procurements are to be treated equally and impartially. Consequently, a party who chooses to wait until the last possible moment to dispatch his bid must assume the risk that the bid will be late.

We therefore believe that IRS acted properly in rejecting Mountain States' bid.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel

Enclosure