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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: The Castle Group

File: B-297853

Date: March 21, 2006

Jason S. Schloss for the protester.

Diane A. Perone, Esq., Agency for International Development, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly declined to accept protester's late proposal where there is no evidence that improper government action was cause of U.S. Postal Service's failure to make timely delivery.

DECISION

The Castle Group, agent for Medex Tianjin Latex Group, protests the Agency for International Development's (USAID) rejection of its proposal as late under request for proposals (RFP) No. M-0AA-GH-06-063, for latex condoms.

We deny the protest.

The RFP informed offerors to submit their proposals by the closing date and time-- January 3, 2006, at 11:00 a.m.--to the following mailing address: "[Ms. Z], Contracting Officer, Office Of Acquisition And Assistance, M/OAA/GH, Rm. 7.09-086, 1300 Pennsylvania Avenue, N.W., Washington, DC 20523-7900." RFP § L.9. The first page of the RFP (Standard Form 33), as well as the RFP's cover letter indicated that the first line of the address was to be "U.S. Agency for International Development." The RFP also incorporated Federal Acquisition Regulation (FAR) § 52.215-1, which provides that late proposals generally will not be considered for award if they do not reach the designated government office by the time specified in the solicitation.

Castle used the U.S. Postal Service's (USPS) on-line Click-N-Ship® program to prepare an Express Mail shipping label, and addressed its proposal as follows: "[Ms. Z], OFC OF ACQUISITION & ASSISTANCE, M/OAA/GH, RM 7 09-086, 1300 PENNSYLVANIA AVE NW, WASHINGTON DC 20004-3002." Castle knew that it had

not provided the precise address information from the RFP, but states that it was unable to do so because the Click-N-Ship® program's field limitations and address verification system would not accommodate all the required information, and also automatically changed the zip code from "20523" (as entered by Castle) to "20004." Typed below the shipping label was the RFP number, Castle's address, and the words "BID ON BEHALF OF MEDEX TIANJIN LATEX GROUP" as well as "Solicitation Due Date: January 3, 2006," and "Time: 11:00 AM."

On December 28, 2005, Castle attempted to contact the contracting officer to discuss its address issues; it left her a voice mail message to call back, but she "was not told of the problem." Initial Comments at 2. The contracting officer did not call back, and Castle opted to send the proposal package that same day using the Click-N-Ship® label it had prepared. The package arrived at a USPS facility in Washington, D.C. on December 29, and delivery was attempted on December 30. The package was refused by an unidentified person or persons who wrote an "X" across the addressee information, the words "official 20460," "Refused 12/30/05," and the initials "CE," and stamped the package at least four times using a "return to sender" stamp with "refused" marked as the reason. The USPS returned the unopened package to Castle on January 6, 2006, well after the closing date and time had passed. According to Castle, it was advised by the USPS in Washington, D.C. that "delivery was attempted at USAID . . . by a substitute USPS carrier"; "the package was refused by Mr. [B], the mailroom supervisor at USAID . . . located at 1300 Pennsylvania Avenue"; and the handwritten remarks and "CE" were made by USPS after the package was refused. Initial Comments at 2. Castle requested that the contracting officer allow it to resubmit the proposal and, when the contracting officer refused, Castle filed this protest.

Castle asserts that, notwithstanding the discrepancies on its address label, its proposal package arrived at the proper address prior to the closing time and was improperly refused by the agency. In Castle's view, this constituted government mishandling and entitles it to have USAID consider its proposal. The agency maintains that it never received or refused Castle's proposal; the firm's failure to follow the address instructions prevented it from arriving in USAID's mailroom.

An offer is late if it does not arrive at the office designated in the solicitation by the time specified in the solicitation. Sencland CDC Enters., B-252796, B-252797, July 19, 1993, 93-2 CPD ¶ 36 at 3. Where late receipt results from the failure of an offeror to reasonably fulfill its responsibility for ensuring timely delivery to the specified location, the late offer may not be considered. Aztec Dev. Co., B-256905, July 28, 1994, 94-2 CPD ¶ 48 at 3. An offer that arrives late may only be considered if it is shown that the paramount reason for late receipt was improper government action, and where consideration of the proposal would not compromise the integrity of the competitive procurement process. Caddell Constr. Co., Inc., B-280405, Aug. 24, 1998, 98-2 CPD ¶ 50 at 6. Improper government action in this context is affirmative action that made it impossible for the offeror to deliver the proposal on time. Id.

The protest is without merit because there is no evidence of mishandling or any other improper agency action. USAID's Director of Mail Management denies receiving or rejecting the Castle proposal package, and reports that the contractor's mailroom supervisor and mailroom staff also deny handling the package.¹ Director's Affidavit, ¶¶ 7-8. In this regard, there is no marking on the returned package to indicate it was handled by USAID's mailroom. Further, as noted by the Director, USAID mailroom procedures do not include handwritten notations for returns but, rather, involve the use of a special "return to sender" label (*Id.* at ¶ 6) which, we note, does not appear on the photocopy of the returned package's label. Further, the package's tracking information and the returned label both indicate that the package was refused at zip code 20460, which is assigned to the Environmental Protection Agency (EPA), another tenant in the Ronald Reagan Building with its own mailroom. Since, aside from the protester's speculation, there is no evidence that USAID mishandled the proposal package or contributed in any way to the failed delivery attempt, the agency's subsequent refusal to accept the late proposal was proper.

We find that the record supports the alternative explanation--suggested by the agency--that Castle's mislabeling of the proposal package may have caused the failed delivery. In this regard, the Reagan Building, where USAID is located, is the second largest federal building in the country, and is shared by three other federal agencies and more than 50 private businesses. There are five separate mailrooms and zip codes for the building--one for each federal agency and one for the private businesses. USAID's zip code--as stated in the RFP--is 20523 and its mailroom is located on the 13½ Street side of the building, while the private business tenants share the 20004 zip code--the zip code on Castle's mailing label--and have their mailroom on the Pennsylvania Avenue side. According to USAID's Director, the mail for each federal agency is delivered by USPS directly to the particular agency's mailroom. Given the zip code on Castle's proposal package and the absence of the agency's name, it appears that USPS may have attempted delivery to the mailroom for the private business tenants, rather than to USAID's mailroom. The Director explains that, when USAID mail is misdirected to other agencies in the building, those agencies' staff "will sometimes bring pieces of misdirected mail to our attention--provided, of course, that the address on the letter or package makes clear that it is intended for receipt by USAID." *Id.*, ¶¶ 3-5. The Director further states that, in his experience, it is uncommon for USAID mail to be misdirected to the

¹ USPS allegedly told Castle that the Director is the individual who refused the proposal package. The Director denies this, explaining that, as the contracting officer's technical representative, he does not accept, refuse, or otherwise handle the mail at USAID, and he does not instruct anyone else to do so; rather, his responsibility is limited to overseeing the private contractor that runs the day-to-day activities of USAID's mailroom. Director's Affidavit at ¶¶ 1, 7. Again, since there is no evidence that the Director was involved in any way in the attempted delivery of the proposal package, there is no basis for questioning his statement.

private business tenants, and even less common for those firms to alert USAID staff when it does happen. *Id.* at ¶ 5. Thus, while it appears that Castle’s proposal package arrived at the proper street address—1300 Pennsylvania Avenue—it also appears that Castle’s failure to use the correct zip code and agency name may have prevented delivery of its proposal.

Castle asserts that we should find “government mishandling” based on the “malfunctioning” Click-N-Ship® program, and USPS’s failure to deliver its Express Mail package by the guaranteed time and taking 7 days to return the package to Castle.² Supplemental Comments at 5. None of these matters constitute government mishandling. First, we view the alleged Click-N-Ship® problems as a failure on the protester’s part, not the government’s, since the protester chose to use the Click-N-Ship® program to print its mailing label. Castle was responsible for choosing a means of addressing its proposal package—such as simply handwriting all necessary information on an Express Mail envelope and having the postage affixed at the nearest post office—that would result in the package being correctly addressed. Further, any delay connected with USPS’s handling of the Express Mail delivery is not considered to be mishandling by the government; the word “government” in the context of proposal mishandling refers to the procuring agency, not USPS, and the mishandling must occur after the proposal is received at the government installation.³ California State Univ., Fullerton, B-243040.2, May 9, 1991, 91-1 CPD ¶ 452 at 2.

The protest is denied.

Anthony H. Gamboa
General Counsel

² Castle asserts that the contracting officer’s failure to return its phone call of December 28 constituted government mishandling. However, an agency’s failure to return a phone call does not constitute mishandling of a proposal.

³ Castle asserts that because it sent its proposal by Express Mail at least 2 working days prior to the closing time, its late proposal should be considered. However, while the FAR at one time provided for consideration of late-received proposals sent by Express Mail, neither the current FAR § 52.215-1, nor the RFP, provides an exception permitting consideration of late mailed proposals.