



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



B-158766

The Honorable Tom Steed, Chairman
Subcommittee for Treasury--Postal
Service--General Government
Committee on Appropriations
House of Representatives

Dear Mr. Steed:

By letter dated February 23, 1978, you expressed concern about an allegation of possible violation of Government contracting procedures and requested that the case be reviewed by us to determine if it is possible to circumvent existing controls. It was alleged that a contract could be obtained improperly by submitting a late, low bid after bid opening, through misuse of certified mail that made the bid appear to have been mailed before the bid opening.

We reviewed contracting procedures from the Defense Acquisition Regulation and the Federal Procurement Regulations that govern the use of certified mail and Postal Service regulations on certified mail. We also spoke with the appropriate Postal Service, General Services Administration, and Department of Defense officials about the matters discussed in this report; we considered their views in preparing it.

Our observations are summarized below; the results of this review are detailed in enclosure I.

We found that it would be possible for a bidder to subvert late bid control procedures by improperly using certified mail under current Government procurement regulations and Postal Service procedures. To do this, a bidder could mail a certified letter with metered postage to himself and obtain a receipt showing the procurement organization as the addressee. After bid opening, the bidder's original envelope could be reopened; a new bid could be inserted, resealed, readdressed, and mailed. We noted, however, that there have been very few allegations of certified mail abuse to circumvent late bid procedures.

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The General Services Administration and the Defense Department are currently implementing changes in certified mail procedures to make subversion of late bid controls more difficult. It will not, however, entirely preclude the misuse of certified mail. Postal Service officials do not agree with the proposed changes, and they expressed concern about the effect of such changes on postal operations.

Abusing current late bid controls clearly constitutes a crime that subjects the offender to criminal prosecution. Mandatory use of registered mail would greatly improve controls and would add safeguards to the bidding process. However, this change would nominally increase bidding costs and would increase delivery time--thus possibly increasing the number of late bids or lessening the time available for bidders to respond. Because the number of suspected cases on the improper use of certified mail is small, we do not recommend eliminating certified mail as a basis for the consideration of late bids at this time. However, we are recommending to General Services and Defense that they watch the situation closely. If such cases become more prevalent, the regulations should be changed to require submission of a bid by registered mail as a method by which a bidder can be assured that his bid will be considered under the late bid provisions of the procurement regulations if his bid is delivered late.

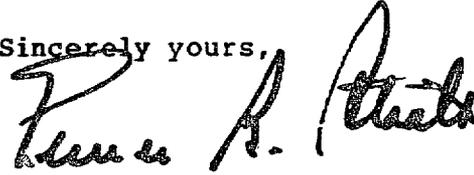
As arranged with your office, a copy of this report will be sent to Congressman Richard C. White, who made a subsequent request to us on the same subject. No further distribution will be made until 30 days after the date of the report; at that time, unless you or Congressman White publicly announce its contents earlier, we will send copies to selected agencies and congressional committees.

This report contains information on how to use certified mail to circumvent late bid procedures. Since no immediate action is being taken to prevent this from occurring, we do not believe that an extensive distribution of this report would be in the Government's best

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interest. Consequently, the recipients of this report should guard against indiscriminate disclosure of this information.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Kenneth A. Bentsen". The signature is written in dark ink and is positioned to the right of the typed name.

Comptroller General
of the United States

Enclosure

ENCLOSURE I

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REVIEW OF POSSIBLE MISUSE OF CERTIFIED MAIL
TO CIRCUMVENT LATE BID CONTROL PROCEDURES

BACKGROUND

The Defense Acquisition Regulation and the Federal Procurement Regulations require that bids be submitted to the procurement office not later than the exact time set for bid opening. However, the regulations also provide that a late bid may properly be considered for a contract award when (1) it is received before the award and (2) it was sent by registered or certified mail at least 5 days before bid opening. These regulations also provide that the only acceptable evidence to establish the date of mailing of a late bid by registered or certified mail is its postal service postmark on the wrapper or the original receipt.

It has been alleged that a bidder could mail a certified letter to himself or a friendly party 5 days before bid opening and obtain a receipt showing the procurement activity as the addressee. The envelope might be addressed by stick-on label or pencil, and the flap could be sealed lightly or tucked in unsealed. After bid results are ascertained, the bidder could mail in a new bid in the original metered envelope; the envelope would usually not be postmarked a second time. This fraudulent bid might be accepted when it is received by the procurement office.

CAN LATE BID CONTROLS BE CIRCUMVENTED
WITH CERTIFIED MAIL?

Cognizant officials from the Postal Service, the General Services Administration, and the Department of Defense all agreed that the situation above could occur with certified mail. Our review of Postal Service operating procedures and discussions with Postal officials also confirmed this.

Postal clerks are required to match the addressee name and address on the certified mail receipt against the article mailed and to postmark only the receipt portion. Verification for quantity mailings, however, is limited to spot checking to determine if the mailings are properly prepared. In these instances, if the certified mail numbers are listed in consecutive order and the mail is similarly arranged, the Postal clerks need only

--count the pieces of mail and the number listed for agreement,

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- compare certified mail numbers on the first and last articles with the first and last number on the listing for agreement, and
- spot check to determine that names and addresses on the wrappers and receipts agree.

Once verification is completed, the articles are deposited in the mail. After verification, certified mail is dispatched and handled in the same manner as ordinary mail. Under Postal Service regulations, wrappers with machine-metered postage will not be postmarked. A delivery record is maintained at the post office that delivers the letter to the addressee, but no record is maintained at the office where the certified article is mailed. Certified mail can also be reintroduced into the system through a drop box; the date would then not be current. However, a Postal Service official stated that, due to mail volume and because the clerk checks only on a selective basis, an outdated metered postmark on an article redeposited into the mail may not be corrected.

Postal Service procedures, therefore, do not prevent a bidder from circumventing late bid procedures designed to foreclose the consideration of late bids except in very limited circumstances.

PROPOSED CHANGES TO FEDERAL PROCUREMENT
AND DEFENSE ACQUISITION REGULATIONS

As a result of bid protests filed against the Federal Supply Service of the General Services Administration, that agency proposed a temporary regulation change to the Federal Procurement Regulations to eliminate certified mail from late bid consideration. On September 8, 1977, the Inter-agency Procurement Policy Committee, consisting of 5 representatives from 21 agencies (including Defense and the Office of Federal Procurement Policy) met to discuss the General Services Administration proposed changes. All agencies present, except General Services, were opposed to abandoning the use of certified mail.

Sixteen agencies at the meeting favored an alternate proposal to require that, when certified mail is used, the wrapper and the certified mail receipt must both be post-marked by the Postal Service. General Services and Defense are currently implementing these changes for the Federal Procurement and Defense Acquisition Regulations.

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Proposal to eliminate certified mail
from late bid consideration

In rejecting the proposal to eliminate certified mail from late bid consideration, agencies noted that

- they have not encountered the problem that prompted the General Services proposal, and they have no evidence that certified mail has been misused;
- an increase in late bids would be likely because it takes longer to deliver registered mail; and
- requiring registered mail would increase bidder costs.

Each of these concerns is addressed below.

No problem encountered

Procurement officials from 20 agencies at the meeting indicated that they had not experienced allegations of misuse of certified mail to subvert late bid control procedures. (We also found few such cases.)

A protest involving two solicitations was submitted to us in 1976. These cases were cited by General Services when it proposed to eliminate certified mail from late bid consideration. We found that the protester did not provide any evidence to indicate that the Federal Agency acted improperly in accepting the bids in question; the protest was therefore denied. Our decision at that time noted:

"The fact that, in an isolated case, a bidder may subvert the intent of the Federal Procurement Regulations * * * does not, in our opinion, warrant an overhaul of the late bid procedures."

A third protest involving the same two contractors was submitted to us in 1977 but was later withdrawn when General Services canceled the solicitation. In addition, one case involving an Army solicitation has been referred to the Postal Service for investigation.

Neither General Services nor Defense officials could provide additional examples of allegations. A Postal Service

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official stated that he had conducted an informal survey of their procurement offices and found that no such cases had been alleged.

Delivery delays on registered mail

Registered mail is under direct signatory control at every transfer point; this provides greater security than certified mail. Although the Postal Service has not documented delivery time differences, Postal officials estimate that registered mail requires 1 to 2 days longer than certified mail to deliver. Additional delays could occur at the receiving installation due to the unique handling. While General Services officials were uncertain about the total time for delivery, Defense officials believe the total delivery time will increase by 5 days. These officials believe that use of registered mail may delay a contract award or necessitate a procedural change to require that proposals be sent by registered mail 10 days before bid opening to be eligible for consideration if late, rather than the 5 days currently required, thus reducing bidder preparation time. One Defense official estimated that 90 percent of all bids are submitted by certified mail.

Increased cost of using registered mail

Bidders currently pay \$0.90 for certified mail and \$3.30 for registered mail in addition to the standard postage rate.

General Services and Defense officials agreed that the \$2.40 difference is not significant when it is compared to the cost of preparing and submitting individual bids; however, they believe that these costs are worth considering when changing procurement regulations.

The primary concern with cost appears to be the effect on small businessmen. However, one contractor association representing 50 small businesses has expressed its views to General Services and Defense officials that, despite the nominal added cost and added time inherent to using registered mail, the greater safeguard to the bidding system justified its mandatory use.

Also, the proposed temporary regulation discussed above was circulated by General Services to outside interested parties; 10 of the 35 organizations contacted responded.

Six concurred, three offered no comment, and one objected to a regulation change stating that, if there is a suspected illegality, the Government should address that problem separately.

Proposal to retain certified
mail with added controls

As stated earlier, Defense and General Services are implementing a proposal that will require a Postal Service postmark on the mailer's receipt and on the envelope or wrapper. If either postmark is legible, that postmark will verify the mailing date for late bid consideration.

This approach would require the mailer using certified mail to use postage stamps that will receive a wrapper postmark or to request a postmark date on a wrapper using metered postage. However, under Postal Service regulations (as stated earlier) Postal clerks do not postmark the wrapper if machine-metered postage is used.

Postal officials do not agree with the proposed change. They noted that postmarking metered certified mail would be a sizable administrative burden considering the thousands of postal facilities throughout the country, the volume of mail that is processed, and the fact that any procedural change would apply to all persons that use certified mail. In addition, the proposed requirements may be considered a change in the level of mail service that will require (1) approval of the Postal Service Policy group and the Postal Rate Commission, with a possible change in charges and (2) a change in union agreements because of the added duties to clerks.

According to Postal officials, using postage stamps entirely instead of machine-metered postage would entail additional operational costs from printing, canceling, and distributing the stamps. About 50 percent of the Postal Service revenue now comes from metered mail. Also, most contractors have their own postage meters; thus, the use of postage stamps would be an additional burden for them.

Moreover, the proposed changes possibly will not preclude the alleged situation. When the mail is reintroduced into the mail system, it will not be automatically postmarked again if it already bears metered postage whether or not a contractor receives a wrapper postmark.

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The wrapper would be postmarked again only if a Postal clerk notes the outdated postmark or meter mark on a selective check basis.

CONCLUSION

Under current regulations, late bid controls abuses can occur, but such an action constitutes a crime that subjects the offender to criminal prosecution. Mandatory use of registered mail would greatly improve controls and would add safeguards to the bidding process; however, it would increase costs (although not substantially) and would increase delivery time--thus increasing the number of late bids or lessening the time available for bidders to respond. Because the number of alleged violations that have occurred is small, we do not recommend eliminating certified mail for bidding on Government procurement at this time.

RECOMMENDATION

We recommend that the Administrator of the General Services Administration and the Secretary of Defense revise the regulations if such cases become more prevalent. If the regulations are revised, they should require submission of a bid by registered mail as a method by which a bidder can be assured that his bid will be considered under the late bid provisions of the procurement regulations if his bid is delivered late.