

01559

Louis Kozlakowski  
Proc. I

**DECISION**



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

FILE: B-188329

DATE: February 25, 1977

MATTER OF: Lo-Rencin Contracting Co., Inc.

**DIGEST:**

Protester's bid sent by certified mail less than 5 calendar days before bid opening and received day after bid opening is late, and not for consideration either under 5-day exception or where late receipt is due solely to Government mishandling.

Lo-Rencin Contracting Co., Inc. (Lo-Rencin), protests the rejection of its bid as late by the Veterans Administration (VA) Hospital, Lebanon, Pennsylvania, under invitation for bids (IFB) No. 595-13-77.

Bids were opened on January 3, 1977. On January 4, 1977, the bid of Lo-Rencin was received by the VA. The envelope in which Lo-Rencin's bid was sent by certified mail is postmarked December 30, 1976. The bid was considered late under the applicable provision of the solicitation as it had not been mailed 5 days prior to bid opening. Lo-Rencin contends that its bid was mailed within the 5-day requirement.

Our Office has consistently held that the bidder has the responsibility to assure timely arrival of its bid for a scheduled bid opening and must bear the responsibility of the late arrival of a bid unless the specific conditions set forth in the IFB are met. B.E. Wilson Contracting Corp., 55 Comp. Gen. 220 (1975), 75-2 CPD 145, and cases cited therein.

The Lo-Rencin protest is based on Federal Procurement Regulations (FPR) § 1-2.201(31) (1964 ed. amend. 153) which was incorporated into the IFB in the "Instructions to Bidders." The regulation reads in pertinent part:

B-188329

"LATE BIDS, MODIFICATIONS OF BIDS, OR  
WITHDRAWAL OF BIDS

"(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 the 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

"(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." (Emphasis added.)

Consideration of mailed bids received late is permitted either where sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids, or where the late receipt was due solely to Government mishandling after receipt at the installation. The record shows that the bid of Lo-Rencin was mailed on December 30, 1976, only 4 days prior to the bid opening date of January 3, 1977. In calculating the 5-calendar-day exception for registered or certified mail the date specified for the receipt of bids is excluded. See Canadian Commercial Corporation, B-185816, June 21, 1976, 76-1 CPD 396; Perma-Steel, Inc., B-183276, June 12, 1975, 75-1 CPD 357. Further, there has been no showing that the January 4, 1977, receipt was due solely to mishandling by the Government after receipt at the Government installation. Also, contrary to the protester's suggestion, there is no law or regulation which provides for consideration of late bids solely because the bidder is a minority-owned firm.

In view of the above, the protest is denied.

*R. F. K...*  
Acting Comptroller General  
of the United States



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

*L. Kojalakowski  
Box I*

FEB 25 1977

B-188329

Lo-Romain Contracting Co., Inc.  
830 Green Avenue  
Brooklyn, New York 11221

Attention: Mr. Charles Lawrence  
President

Gentlemen:

By decision of today, copy enclosed, we have denied your protest. We are also returning the sealed bid unopened.

Sincerely yours,

R.F. KELLER

Acting  
Comptroller General  
of the United States

Enclosures - 2

lrh