

DECISION



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

FILE: B-194698

DATE: May 23, 1979

10,284

MATTER OF: Graphic Controls Corporation

DLG 01645

DIGEST:

Protester's late bid was properly rejected by agency notwithstanding mailing of bid by U.S. Postal Service express mail, which guaranteed timely delivery, in absence of showing that bid was mishandled by procuring agency after its receipt.

AGC00052

Graphic Controls Corporation (Graphic) protests the rejection of its bid by the Department of the Navy, Naval Supply Center, Oakland, California, under invitation for bids (IFB) No. N00228-79-B-9695.

AGC00969

The basis for the rejection was that Graphic's bid was not received by the Navy until after the time set for bid opening. Bid opening was scheduled for 10:00 a.m., April 9, 1979. Graphic's bid was sent by the U.S. Postal Service, which guaranteed delivery by the next day, to the Navy via express mail, on April 7 at 9:00 a.m. However, Graphic's bid was not received by the Navy until April 10, 1979. (We have been informed by the Navy that the bid was received on April 10 in the mail room at 9:30 a.m. and forwarded to and received in the designated office at 9:51 a.m.) Graphic does not dispute the fact that its bid was late but argues that since the Postal Service guaranteed delivery and Graphic cannot control the Postal Service's actions, its bid should not be rejected as late. Graphic also contends that since its bid would result in a considerable savings to the Government, its consideration would be in the Government's best interest.

THAT
[Protester Complains, Postal Service
WAS AT FAULT for LATE
Bid DELIVERY]

005410

Defense Acquisition Regulation § 7-2002.2 (1976 ed.), "Late Bids, Modifications of Bids or Withdrawal of Bids," which was incorporated into the IFB, states:

"(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:

"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of bids * * *; or

"(ii) 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 Graphic's bid was properly rejected by the contracting officer. Graphic's bid should have been delivered to the designated office prior to bid opening, but was not received until after bid opening. The fact that Graphic's bid was sent via express mail, or delivery in that manner was guaranteed, did not relieve Graphic of its obligation to assure timely arrival of its bid. 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, unless the specific conditions of the solicitation are met. H. Oliver Welch & Company, B-193870, February 9, 1979, 79-1 CPD 96.

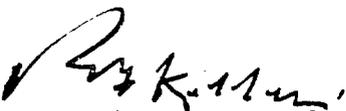
Under the terms of the IFB a late bid may be considered if sent by registered or certified mail in the manner outlined above, which is not the case here,

or where the "late receipt was due solely to mishandling by the Government after receipt at the Government installation" making the procurement. Furthermore, the Postal Service's failure to timely 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.

With regard to Graphic's second contention that its bid should be considered because it would be the most advantageous to the Government, in accordance with § 2-301 of DAR (1976 ed.) for a bid to be considered for award it must comply with the IFB (as to the method and timeliness of submission and as to the substance of any resulting contract) so that all bidders may stand on an equal footing and the integrity of the competitive bidding system may be maintained. Since Graphic's bid did not comply with the IFB as to timely submission, it cannot be considered for award. Although the rule works to the financial disadvantage of both Graphic and the Government, the purpose of the rule is to maintain the integrity of the competitive bidding system which transcends the Government's loss of a lower price in a particular procurement.

Our Office will generally request 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.

Accordingly, the protest is summarily denied.


Deputy Comptroller General
of the United States