

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES

WASHINGTON, D. C. 20548

*12593 Fitzmaurice*  
*Proc I*  
*[Protest of Bid Rejection for Lateness]*

FILE: B-196350

DATE: January 21, 1980

MATTER OF: Enrico Roman, Inc. *DLG 03656*

DIGEST:

1. Protester's late bid was ~~properly~~ *ACCORDING* 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.
2. Agency's alleged failure to provide protester with IFB amendment in time for protester to submit timely bid provides no basis for considering protester's late bid where there has been adequate competition and no indication that prices were unreasonable or that contracting agency intended to preclude protester from competing.

Enrico Roman, Inc. (Roman), protests the decision by the Department of Agriculture (DOA) that Roman's bid submitted in response to invitation for bids (IFB) No. 64-A-SEA-79 was received late and could not be considered for the award. However, for the reasons indicated below, we find no legal basis to object to DOA's decision in this matter.

The IFB solicited bids for the construction of a Food Pathogen Laboratory at DOA's Eastern Regional Research Center in Wyndmoor, Pennsylvania. Originally, the IFB required all bids to be received at the designated bid opening office no later than 2 p.m. on September 14, 1979. However, on September 12, 1979, the contracting officer (CO) discovered that two pages of the specifications had been inadvertently omitted from the original bid package. Because the CO believed that the contents of these pages were not trivial and could have an impact on a bidder's price, he issued amendments Nos. 2 and 3. Amendment No. 2 was issued telegraphically *DLG 03657*

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and extended the date for the receipt of bids until 3 p.m., September 19, 1979. This allowed time for amendment No. 3 to be mailed to all bidders providing them with the two missing pages.

When bids were opened on September 19, 1979, a total of seven bids had been received. However, three of these had been received after the time set for bid opening. These late bids and the times of receipt are as follows:

<u>Bidder</u>	<u>Time received at Government Installation</u>	<u>Time received at Bid Depository</u>
Boro Developers, Inc. (Boro)	12:15 p.m.	3:24 p.m.
Bachman Construction Co. (Bachman)	12:15 p.m.	3:33 p.m.
Enrico Roman, Inc. (Roman)	3:20 p.m.	3:30 p.m.

All three bids had been sent by U.S. Postal Service express mail. Each envelope was accompanied by a receipt containing the date and time of delivery at the destination point (the Government installation). The CO concluded that the Roman bid could not be considered under the provisions of the IFB's late bid clause because it had not been sent by registered or certified mail nor was there any indication of mishandling by the Government after the bid had been received at the Government installation.

However, regarding the Boro and Bachman bids, the CO concluded that these particular bids had been mishandled by the Government after receipt at the Government installation. Both had arrived at the installation prior to the time set for bid opening. In the CO's opinion, had the two bids been properly handled by the Government, they would have been received at the appropriate room prior to bid opening. In light of this, the CO held that the

late bid clause allowed both the Boro and Bachman bids to be considered for the contract award. Subsequently, Boro was found to be the low responsive, responsible bidder and was awarded the contract.

Roman, however, argues that the CO was wrong when he decided that the Roman bid could not be considered under the provisions of the solicitation's late bid clause. As far as the late bid clause is concerned, Roman believes that express mail is the equivalent of registered or certified mail. It contends that the meaning of terms, such as "registered or certified mail," must reasonably expand with new developments in technology and practice. Thus, even though the regulations may not have yet recognized the introduction of express mail, our Office should nevertheless hold that express mail is the equivalent of registered or certified mail for purposes of the late bid clause.

Assuming, then, that express mail is the equivalent of registered or certified mail, Roman argues that its bid was late due solely to delay in the mails for which it was not responsible. In other words, Roman believes that if the Postal Service had delivered the bid by the time guaranteed under express mail service, there would have been no question about the timeliness of its bid. Roman also criticizes the amount of time it took DOA to have amendment No. 3 delivered. It believes that if it had received amendment No. 3 before September 17, 1979, it could have completed the bid more quickly and mailed it sooner.

Therefore, based on the foregoing arguments, Roman believes that its apparent late bid may be considered. And if after being evaluated the bid is found to be low, then it should be accepted and Roman awarded the contract.

Our Office has consistently held that a bidder has the responsibility to assure the timely arrival of its bid and must bear the responsibility for its late arrival unless the specific conditions of the

IFB are met. Gross Engineering Company, B-193953, February 23, 1979, 79-1 CPD 129. Here, the specific conditions permitting the consideration of a late bid are set forth in clause 7, "Late Bids and Modifications or Withdrawals," of Standard Form 22, "Introductions to Bidders," which states in pertinent part:

"(a) Bids and modifications or withdrawals thereof received at the Office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless: (1) They are received before award is made; and either (2) they are sent by registered mail or by certified mail for which an official dated-post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the Government that the late receipt was due solely to delay in the mails for which the bidder was not responsible, or (3) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation \* \* \*."

As mentioned previously, the Roman bid was not sent by registered or certified mail as required by section (a)(2), clause 7. Roman, however, has argued that express mail is equivalent to registered or certified mail. But DOA has cited our decision of Graphic Controls Corporation, B-194698, May 23, 1979, 79-1 CPD 373, for the rule that express mail is not equivalent to registered or certified mail. In rebuttal, Roman claims that our Office never specifically addressed that question in the decision.

However, we believe that Graphic Controls Corporation, supra, does stand for the proposition, as DOA claims, that express mail is not equivalent to registered or certified mail. We noted in that decision, as we have here, that the bidder has the responsibility to assure the timely arrival of its bid and that a late bid may only be considered under the specific conditions

set out in the solicitation. We further noted that the protester in Graphic Controls Corporation, supra, did not meet the specific conditions of the IFB when it employed express mail instead of registered or certified. Likewise, in order for Roman to be able to invoke the late bid exception established by section (a)(2), clause 7, it must have sent its bid by either registered or certified mail. It did not do so. Therefore, its late bid may not be considered under this exception.

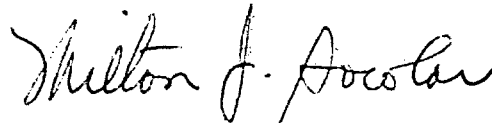
However, clause 7 also provides that a late bid may be considered if "the late receipt was due solely to mishandling by the Government after receipt at the Government installation." But we have held that the Postal Service's failure to timely deliver a bid does not constitute Government mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271. Thus, Roman's claim that the lateness of its bid was due to the Postal Service is not a basis to consider its bid under this second exception. Moreover, the record clearly indicates that there was no Government mishandling of the Roman bid between the time it was received at the Government installation and the time it was delivered to the bid opening room. Therefore, this second exception is also not applicable here.

Finally, Roman has criticized the length of time it took DOA to have amendment No. 3 delivered. Roman attributes the lateness of its bid, in great part, to this delay in the receipt of amendment No. 3. However, we have held that the failure to provide a bidder a copy of an amendment in time for him to submit a timely bid is not a basis to question an otherwise proper award so long as the method of solicitation has provided adequate competition, reasonable prices, and there has been no deliberate intent to exclude that bidder. Oil Country Materials of Houston, Inc., B-189646, December 13, 1977, 77-2 CPD 459.

In the present case, six bids were considered for the award, indicating that there was adequate competition. There is no evidence that the bid prices were unreasonable nor any evidence that DOA deliberately

tried to prevent Roman from competing. Therefore, we do not believe that the delay in Roman's receipt of amendment No. 3 is a basis to upset the award to Boro.

Protest denied.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General  
of the United States