

**DOCUMENT RESUME**

03307 - [A2353485]

[Late Bid Sent by Commercial Carrier]. B-188748. August 18, 1977. 2 pp.

Decision re: C. J. Hendry Co.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Bor-Air Freight Co., Inc.; Department of the Navy: Navy Ships Parts Control Center, Mechanicsburg, PA; Kereks Delivery.

Authority: 54 Comp. Gen. 304.

The protester objected to the determination that its late bid could not be considered for award. The bid was sent by commercial carrier rather than by mail, and the determination by the contracting activity that it should not be considered was correct. (Author/SC)

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**DECISION**



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

V.D. Macfarther  
Proc. I

**FILE: B-188748**

**DATE: August 18, 1977**

**MATTER OF: C. J. Hendry Company**

**DIGEST:**

Late bid may not be considered for award since it was sent via commercial carrier rather than via the mails.

The C. J. Hendry Company (Hendry) protests the determination that its late bid could not be considered for award under invitation for bids No. N00104-77-B-0413, issued by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. Award, notwithstanding the protest, was made to the bidder which submitted the low, timely bid.

Bidders were advised in the invitation that bid opening would occur at 11:15 a.m. on March 21, 1977. Hendry obtained the services of Bor-Air Freight Co., Inc. (Bor-Air), a commercial carrier, to transmit its bid to the contracting activity. Bor-Air picked up the bid from Hendry at 4:40 p.m. on March 17. The bid was then carried by a commercial air carrier to Philadelphia, where it arrived on the morning of Friday, March 18. The bid was delivered there to Kereks Delivery (Kereks), the contract carrier for Bor-Air, for the actual delivery to the contracting activity. Kereks, however, encountered delivery problems which caused delays in its Monday (March 21) morning deliveries, and therefore Kereks did not attempt delivery of the bid to the contracting activity until 2 p.m. on March 21. Because the contracting activity did not accept afternoon deliveries, Kereks returned the following day to make delivery at 11:35 a.m. We note that even had the activity accepted the afternoon delivery on March 21, receipt of the bid would still have occurred after the bid opening time.

The general rule followed by our Office is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. That in this case Bor-Air assumed this responsibility and that the late delivery occurred through the fault of Bor-Air and its agents, rather than through the fault of Hendry, has no bearing on the proper acceptance of the late bid by the contracting activity. Exceptions to the general rule requiring rejection of late bids may be permitted only in the exact circumstances provided for in the invitation. While application of the rule may be harsh, the invitation allows consideration of a late bid only when the bid was sent by mail. The late bid clause incorporated by reference into the invitation reads in part:

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"(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 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 earlier); 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."

Inasmuch as the Hendry bid was sent by commercial carrier rather than by mail, consideration of the Hendry late bid for award would not have been proper, and the determination by the contracting activity that it should not be considered was correct. Federal Contracting Corp., Taylor Air Systems, Inc., 54 Comp. Gen. 304 (1974), 74-2 CPD 229.

Deputy

*R. G. Koffman*  
Comptroller General  
of the United States