

Eaton 119334

DECISION



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

FILE: B-208683 **DATE:** August 31, 1982

MATTER OF:
KOH Management and Computer Systems, Inc.

DIGEST:

When U.S. Postal Service fails to deliver Express Mail within guaranteed time, late bid mailed one day before opening must be rejected, since solicitation permits consideration of a late bid only if sent five days before opening by registered or certified mail.

KOH Management and Computer Systems, Inc. protests the National Oceanic and Atmospheric Administration's rejection of its late bid in response to solicitation No. NASO-82-00224, on grounds that it should not be penalized for delays caused by the U.S. Postal Service. We deny the protest.

According to the protester, its bid was sent by Express Mail from Baltimore/Washington International Airport at 10 a.m. on Sunday, August 8, 1982, with both written and oral guarantees that it would be hand-carried to the designated bid room at NOAA's Seattle, Washington office no later than the 3 p.m. deadline the following day. Although the protester states that it has not yet received a return receipt from the Postal Service, it has been advised by the contracting officer that the bid was not received until 8:30 a.m. on Tuesday, August 10.

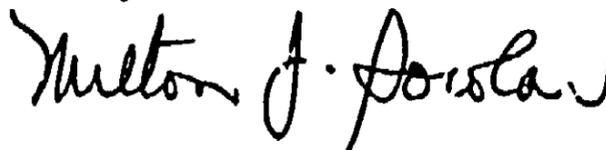
The solicitation in question, the protester indicates, contained the standard clause stating that late bids would not be considered unless they had been sent by registered or certified mail not later than the fifth calendar day before opening.

KOH argues that Express Mail, like registered and certified mail, provides a permanent record of the time a bid is received by the Postal Service, and that a bidder has no control over delays after that time.

For these reasons, KOH believes its bid should be accepted as if it had been delivered on time.

Consideration of a late bid sent by Express Mail, rather than in accord with the exact provisions of the solicitation, would not be proper. As the protester points out, these provisions permit consideration only if sent by specific classes of mail at least five days before bid opening. In addition, the Federal Procurement Regulations, § 1-2.209(a)(31) (1964 ed.), permit consideration of late bids sent by mail (or telegram if authorized) if it is determined that the late receipt was due solely to mishandling by the Government after receipt at the Government installation. Receipt by the Postal Service is not receipt at the Government installation, Express Mail is not the equivalent of registered or certified mail, and in any event, KOH mailed its bid one, rather than five, days before bid opening. The bid was properly rejected. See Sigma Treatment Systems, B-207791, June 21, 1982, 82-1 CPD 617.

The protest is summarily denied.



Acting Comptroller General
of the United States