

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

FILE: B-183718

DATE: July 28, 1975

MATTER OF: Dynamic International, Inc.

DIGEST:

Telegraphic modification of bid delivered by telegraph company to procuring agency after bid opening due to press of traffic at Agana, Guam, telegraph office, generated as result of arrival of Vietnamese refugees, should not be considered under ASPR § 2-303.1 and § 7-2002.2, since there is no question of mishandling of telegram by Government.

On March 21, 1975, the Base Procurement Division, 3rd Combat Support Group, APO San Francisco, issued invitation for bids (IFB) No. F644133-75-B-0016, for mess attendant services at Anderson Air Force Base, Guam. Bids were opened at 10 a.m. on April 21, 1975, with Southeastern Services, Inc. (Southeastern), the apparent low bidder. However, at 1:13 p.m. the RCA Global Communication Annex (RCA), located at Anderson Air Force Base, MAC Terminal, Guam, telephoned the contracting officer and advised that Dynamic International, Inc. (Dynamic), had telegraphed an increase in its discount from 4 percent to 10 percent. The telegram was obtained from RCA at 2:45 p.m. and time stamped by the Government at 4:06 p.m. on April 21. If Dynamic's modification to its bid is to be considered, Dynamic would displace Southeastern as the apparent low bidder.

During a meeting on April 27, 1975, the contracting officer informed a representative of Dynamic of the Government's position that the telegraphic modification would not be considered. As a result, by letter dated April 28, 1975, Dynamic protested the rejection of its telegraphic modification to our Office.

Dynamic contends that its telegraphic modification was received at the RCA Agana office at 6:11 a.m., April 21, 1975, and that delivery by the RCA office at Anderson Air Force Base to the contracting officer was delayed due to unusual circumstances, i.e., the press of traffic at the RCA Agana office occasioned by the arrival of Vietnamese refugees on Guam. In support of its position, Dynamic has relied upon B-158563, June 13, 1966, wherein our Office found no legal objection to the acceptance and consideration of a late telegraphic modification where the record established that the delay was caused solely by the telegraph company and that the delay was abnormal.

The Air Force, on the other hand, has disagreed with Dynamic's position, distinguishing B-158563, supra, on the basis that the pertinent Armed Services Procurement Regulation (ASPR) has been amended. Additionally, the Air Force imputes part of the delay to Dynamic because the telegram was not identified as to priority and was addressed to the buyer personally instead of the Base Procurement Division.

In B-158563, supra, the IFB contained the following pertinent provision:

"7. Late Bids and Modifications or Withdrawals. (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 * * * telegraph if authorized, and it is determined by the Government that the late receipt was due solely to delay in mails, or delay by the telegraph company, for which the bidder was not responsible; * * *"
(Emphasis supplied.)

The instant IFB, however, at Section C, paragraph 20, incorporated ASPR § 7-2002.2 (1974 ed.) which implements ASPR § 2-303.1 (1974 ed.). Section 2-303.1 states that "A late * * * modification of bid * * * shall be considered only if the circumstances outlined in the provision in 7-2002.2 are applicable." Section 7-2002.2 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:

* * * * *

"(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.

"(b) Any modification * * * of bid is subject to the same conditions as in (a) above * * *."
(Emphasis supplied.)

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As can be seen by comparing the underscored portions above, the test for determining whether a late telegraphic modification should be considered has been changed since 1966. Whereas the standard used to include delay solely on the part of the telegraph company, the current standard looks to mishandling solely by the Government after receipt at the installation. Therefore, B-158563, supra, is not applicable.

Under the above-quoted portion of ASPR § 7-2002.2, the only reason to permit consideration of the late telegraphic modification would be a showing of mishandling by the Government after receipt at the Government installation. As noted above, the record discloses that notice of the telegram was not actually received by the Government until more than 3 hours after the bid opening. Therefore, there is no question of mishandling on the part of the Government. Consequently, the telegraphic modification was properly rejected and the protest must be denied. Moore & Hanks Company, B-181563, September 10, 1974; Astro Development Laboratories, Inc., B-181021, July 17, 1974.


Deputy Comptroller General
of the United States