

4053

03896



DECISION

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

*Long James
Part II*

FILE: B-190012

DATE: October 4, 1977

MATTER OF: James Luterbach Construction Company

DIGEST:

Agency rejection of bid modification as untimely was proper where the telegram was received after bid opening notwithstanding fact that agency had received telephone call from telegraph company prior to bid opening indicating that contractor was modifying its bid.

James Luterbach Construction Co., Inc. (Luterbach) has protested the rejection as untimely of a telegraphic modification of its bid submitted in response to Invitation for Bids (IFB) DAHA 47-77-B-0014 by the Department of the Army and Air Force, National Guard Bureau (National Guard), Camp Douglas, Wisconsin. The IFB which was issued on June 27, 1977 by National Guard provided that bids would be opened at 2:00 p.m. on July 28, 1977. According to the protester, at 1:18 p.m. on July 28, 1977, National Guard received a telephone call from Western Union informing it that Luterbach wished to reduce its bid by \$225,600. On July 29, 1977, after bid opening, National Guard received a telegram from Luterbach confirming the telephonic modification. By letter dated August 1, 1977, Luterbach received notification that it was the apparent successful bidder. However, by letter dated August 15, 1977, Luterbach was informed that since it had been determined that Luterbach's bid modification was untimely and that its unmodified bid was not the lowest bid received it would not receive the award.

In accordance with Armed Services Procurement Regulation (ASPR) 2-202.2 (1976 ed.) the IFB provided that bids and modifications could be submitted by telegram. The IFB also contained a clause "Late Bids, Modification of Bids or Withdrawal of Bids (1974)" required to be included in all advertised procurements by ASPR 7-2002.2 (1976 ed.) which provides in pertinent part, with certain exceptions not applicable here that telegraphic

B-190012

modifications will not be considered if received after the exact time specified for bid opening. There is no provision in either the present regulation or the clause which permits the acceptance of a bid modification made by telephone prior to bid opening and confirmed by a subsequent telegram received after opening. In fact, prior to July 31, 1973, ASPR 2-304 (1973 ed.) permitted the consideration of bid modifications under these circumstances. However, Defense Procurement Circular No. 110, May 30, 1973, deleted the provisions of ASPR allowing such modifications and stated:

"Telephonic receipt of telegraphic bids/proposals, modifications or withdrawals no longer qualifies the telegram as being timely. The telegram itself must be received by the proper official at the government installation by the time specified."

Since the telegram from Luterbach was not received until after the opening of the bids, the agency acted properly in determining that the telegraphic modification was untimely.

The protest is therefore denied.


Deputy Comptroller General
of the United States