

**DECISION**



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

**FILE:** B-212351.2

**DATE:** November 18, 1983

**MATTER OF:** Saint Louis Tuckpointing and Painting  
Co., Inc.

**DIGEST:**

Where IFB did not specify the specific bid opening room and agency did not post signs at the location stated in the IFB directing bidders to the bid opening room, agency acceptance of late bid was proper since government action was paramount cause of the late receipt and integrity of bid system would not be compromised since no bids were opened prior to receipt of late bid.

St. Louis Tuckpointing and Painting Company, Inc. (St. Louis), protests the award of a contract to Schuster Engineering, Inc. (Schuster), under invitation for bids (IFB) No. 6520-83A issued by the National Park Service for the exterior rehabilitation of the Old Courthouse, Phase III, St. Louis, Missouri.

The IFB specified that bids would be opened at the Jefferson National Expansion Memorial National Historic Site (Jefferson National) at 2 p.m., May 19, 1983. The low bid of Schuster was received 40 seconds late. After reviewing the matter, the Park Service determined that Schuster's bid could be considered and award was made to Schuster. St. Louis, the second low bidder, argues that Schuster's bid was late and that, in accordance with section 1-2.303-5 of the Federal Procurement Regulations (FPR) (1977 ed.), it should have been rejected.

We deny the protest.

Bid opening was held in room 222 of the Old Courthouse, which was in the north wing of the Jefferson National. The bid opening room was not specified in the IFB. There was no bid depository in the lobby nor were there any signs directing bidders to the bid opening room.

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A representative of Schuster states that he entered the lobby of the Jefferson National at approximately 1:55 p.m. Since the employee was unable to find any signs directing him to the bid opening room, the employee asked a National Park Service guard for directions and was told that the bid opening room was on the second floor. The employee followed the guard's directions, but was unable to find the stairwell to the second floor. The guard was again consulted. The employee was redirected and this time was able to find the bid opening room. The bid opening officer accepted Schuster's bid, but marked down that it was 40 seconds late. At the time Schuster's bid was accepted, no bids had yet been opened.

A bidder has the responsibility of assuring the timely arrival of its bid at the place designated in the solicitation. With respect to hand-carried bids, FPR § 1-2.303-5 provides that a "late hand carried bid . . . shall not be considered for award." However, we have stated that a strict and literal application of the late bid clause should not be utilized to reject a bid where to do so would contravene the intent and spirit of the regulation. See I & E Construction Company, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139; Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD 331. To this end, our cases have recognized that a hand-carried bid which is received late may be accepted where improper government action was the paramount cause for the late delivery and consideration of the late bid would not compromise the integrity of the competitive bidding system. See Scot Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425; Avantek, Incorporated, 55 Comp. Gen. 735 (1976), 76-1 CPD 75. The government has a duty to establish procedures for the timely receipt of bids and we have found government action to be the paramount cause of a late bid where an agency has changed the bid opening room without amending the solicitation or where inadequate directions were posted indicating the location of the bid opening room. See Dale Woods, B-209459, April 13, 1983, 83-1 CPD 396; LeChase Construction Corporation, B-183609, July 1, 1975, 75-2 CPD 2; and 51 Comp. Gen. 69 (1971).

In the present case, we find that the Park Service was the paramount cause of the late delivery of Schuster's bid. The Park Service failed to specify in the IFB the specific bid opening room. The IFB merely stated that bid opening was to take place at the Jefferson National. Also, there were no signs posted at the Jefferson National

directing bidders to the location of the bid opening room. Schuster's representative was at the Jefferson National prior to bid opening and had ample time to deliver the bid had adequate information been given by the Park Service.

Under the circumstances, we find that Schuster acted diligently and reasonably in seeking assistance and in following the directions given and did not significantly contribute to his late arrival at the bid opening room. The paramount cause for the late delivery was the Park Service's failure to properly identify the bid opening room in the IFB and to adequately direct bidders once they had arrived at the general location that was stated.

Finally, we note that consideration of Schuster's bid would not compromise the integrity of the competitive bidding system since no bids had been opened at the time Schuster's bid was accepted. Canyon Logging Company, B-209429, April 1, 1983, 83-1 CPD 343.

The protest is denied.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States