



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Gull's, Inc.  
**File:** B-232599  
**Date:** January 17, 1989

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### **DIGEST**

Even though entrance to building to which hand-carried bids were to be delivered was locked and blocked by construction activity and alternative access was not posted, a bid delivered 2 minutes late may not be accepted since protester failed to allow sufficient time to timely deliver bid and this was paramount cause of the bid being late.

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### **DECISION**

Gull's, Inc., protests the award of any contract under invitation for bids (IFB) No. DAKF70-88-B-0057 issued by the Department of the Army, for appliance maintenance services at four military installations in Alaska.

We deny Gull's protest.

Bid opening was scheduled for 2 p.m. on September 7 in building 977, room 127, Fort Richardson, Alaska. Gull's contends that the co-owners of Gull's arrived at building 977 well before the 2 p.m. deadline but they found the building entrance blocked by ongoing government construction. Gull's states that the sidewalk and entrance to the building were torn up and the parking lot was blocked by the activity of several workmen and their heavy equipment. Gull's states that no signs were posted nor was any person present to direct visitors to alternative entrances.

Gull's contends that its co-owners were initially ignored by the construction workers, but after getting the attention of one worker he signalled for them to go to the rear of the building. The co-owners drove around to the rear of the building, but because it was accessed by a one way street going the opposite direction, they had to take a long detour to reach the back of the building. One co-owner then entered the back of the building, made her way to room 127

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and delivered the bid. Gull's states its bid was delivered at 2 p.m., but the contracting officer stated it was 2:02 p.m. Although the contracting officer took possession of the bid and issued Gull's a receipt, he refused to open it on the ground that it was late.

Gull's alleges that the primary cause of the alleged late delivery was the fact that the main entrance to the building where bids were to be delivered was closed as a result of government construction. Gull's contends that the government also improperly failed to notify or forewarn visitors of the construction or to direct them to alternative entrances. In this regard, Gull's states that neither co-owner was aware that the building had a rear entrance open to the public. Further, Gull's contends that the government was on notice that construction at the front of the building and closure of the front entrance was creating a problem because on the previous day another bidder on a different solicitation had complained he was late for a bid opening for the same reason.<sup>1/</sup> Therefore, Gull's argues that had the government properly notified visitors of the construction, it would have submitted its bid on time. In addition, Gull's argues that the clock used by the contracting officer was in fact wrong and its bid, though delayed by the government's actions, was not really late.

The Army reports that the front entryway was closed from August 23 to October 3 for the installation of a concrete front and rampway. Two signs which stated "Entrance closed," were posted on each of the sliding doors. The signs were handwritten on 8-1/2 by 11-inch size paper. Additionally, tape was stretched across the entryway and another "Entrance closed" sign was posted. The Army states that at 2 p.m. on September 7, bidding was officially closed by the bid opening officer and the door to the bid opening room was closed. At 2:02 p.m. a co-owner of Gull's hand-carried a bid into the room adjacent to the bid opening room and handed it to the Director of Contracting. The time and date were annotated on the outside of the envelope and a receipt showing this information was given to Gull's co-owner.

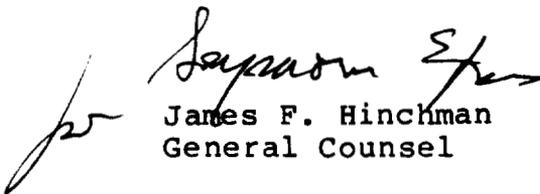
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<sup>1/</sup> The bidder was Richards Painting Co. whose protest of the Army's rejection of its late bid is being sustained today under case No. B-232678. However, the reason for the different result in that protest is that the agency did not have an employee in the room designated for the delivery of hand carried bids when the bidder arrived at that room prior to bid opening.

part, by erroneous government action or advice. Monttier Mechanical, Inc., B-216624, Dec. 17, 1984, 84-2 CPD ¶ 675. Monttier Mechanical, Inc.--Reconsideration, B-216624.2, Feb. 11, 1985, 85-1 CPD ¶ 177. In the circumstances of this case where Gull's allowed itself only 10 extra minutes to deliver its bid after arrival at the government installation, we find that it was this action, rather than any action of the government, which was the paramount cause of Gull's late bid.

Moreover, while Gull's disagrees with the accuracy of the clock utilized by the contracting officer to declare the bid opening time, we have held that, unless it is shown to be unreasonable under the circumstances, the contracting officers' declaration of bid opening time is determinative. Robert R. Nathan Assoc., Inc., B-230707, June 28, 1988, 88-1 CPD ¶ 615. We find no evidence that the contracting officer acted unreasonably in this regard.

The protest is denied.



James F. Hinchman  
General Counsel