



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** W. W. Asphalt

**File:** B-235560

**Date:** August 3, 1989

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## DIGEST

Where the bid opening officer receives a bid hand-carried by a Federal Express courier after declaring the arrival of the 10:30 a.m. bid opening time as shown on the bid opening room clock, the agency properly rejected the bid as late, even though the courier claims that the bid actually was delivered at 10:29 a.m., based on the time displayed electronically on the courier's hand-held computer after scanning the bid package. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances.

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## DECISION

W. W. Asphalt protests the rejection of its bid as late under invitation for bids (IFB) No. YA-651-IFB9-240025, issued by the Bureau of Land Management (BLM), Department of the Interior, for the construction of a highway to Tyson Wash and La Posa Campground in La Paz County, Arizona. Asphalt contends that it should be awarded the contract because its low bid was in government hands 1 minute prior to the deadline for bids.

We deny the protest.

The IFB required that bids be submitted by 10:30 a.m., May 10, 1989, to 390 Union Boulevard, Suite 540, Lakewood, Colorado. BLM states that at approximately 10:15 a.m., the contracting officer and recording clerk took all the bids that had been received to the bid opening room, which is located directly across from the main reception desk and is marked as such by a "Bid Room" sign. Shortly thereafter, according to the contracting officer, he announced, by reference to the clock in the bid opening room, that it was 10:30 a.m., the time set for bid opening by the IFB.

The contracting officer states that while he was opening the first bid package at approximately 10:32 a.m., as shown

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on the clock in the bid opening room, he saw a Federal Express courier enter the front office carrying packages. The record shows that one of those packages was Asphalt's bid. The procurement clerk, sitting at the front desk, signed and accepted Asphalt's bid package from the courier. Upon receipt of the bid package, she wrote the time of 10:33 a.m. on the package, referring to the clock on her desk. At 10:34 a.m., the procurement clerk carried the package into the bid room, stating that the bid had just arrived. The contracting officer, who at this time was conducting the bid opening, rejected the bid as late; consequently, he did not open and read Asphalt's bid.

Asphalt contends that its low bid was rejected improperly because bids were to be submitted at the front office and the Federal Express courier carrying its bid package delivered the package to the procurement clerk in the front office 1 minute prior to the time set for bid opening. Asphalt bases this contention on the courier's delivery record which shows 10:29 a.m. as the time of delivery. The courier states that 10:29 a.m. was the time displayed electronically on his hand-held computer after he scanned the package. (According to Federal Express, its couriers are required to scan each package with the hand-held computer and then record the time shown as the time of delivery.) Asphalt also argues that its bid is lower than that of the apparent awardee; therefore, acceptance of it would be advantageous to the government.

As a general rule, it is the responsibility of the bidder to deliver its bid to the proper place at the proper time and the late delivery of a bid requires its rejection. Gull's, Inc., B-232599, Jan. 25, 1989, 89-1 CPD ¶ 74. Here, Asphalt and BLM disagree as to whether Asphalt's bid arrived just prior to or after the time set for bid opening. According to the bid opening officer, he noticed the Federal Express courier arrive at approximately 10:32 a.m.; in addition, the procurement clerk recorded the time on the bid package as 10:33 a.m. The Federal Express courier, however, states that the package was delivered at 10:29 a.m., based on the time shown on his delivery record, which was signed by the procurement clerk.

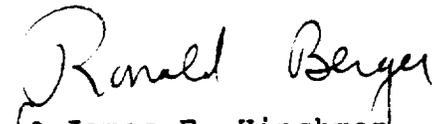
The parties' disagreement is based on the fact that the agency relied on the clocks in its office to determine the time, while the protester relies on the means Federal Express employed to determine the time. Thus, the question for consideration is who determines that the correct time for bid opening has arrived and how that determination is made.

Under Federal Acquisition Regulation § 14.402-1(a), the bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. Here, the contracting officer used the clock in the bid opening room to determine that the time set for bid opening had arrived and then announced that it was time for bid opening. The bid opening officer's declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221.

Aside from the time the courier claims was displayed on the hand-held computer, the record contains no evidence, and Asphalt does not allege, that the contracting officer acted unreasonably in declaring bid opening based on the bid opening room's clock. The difference of a few minutes between that clock and the time allegedly evidenced by the courier's hand-held computer is not sufficient in itself to render the declaration unreasonable. See K.L. Conwell Corp., B-220561, Jan. 23, 1986, 86-1 CPD ¶ 79.

Moreover, we have held that a late bid must be rejected even though it may be more advantageous to the government than those timely received, since the maintenance of confidence in the integrity of the government procurement system is of greater importance than the possible advantage to be gained by considering a late bid in a particular procurement. Hi-Grade Logging, Inc., B-222230; B-222231, June 3, 1986, 86-1 CPD ¶ 514.

The protest is denied.

  
for James F. Hinchman  
General Counsel