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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Nueva Construction Company, Inc.

**File:** B-270009

**Date:** January 16, 1996

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Terry P. Esser, Esq., for the protester.

Philip Kauffman, Esq., and Merilee Rosenberg, Esq., Department of Veterans Affairs, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where the protester submitted its bid seconds after the bid opening officer reasonably declared that the time for bid opening stated in the solicitation had arrived, the agency properly rejected the bid as late, even though the bid opening clock continued to display the same minute in time.

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## DECISION

Nueva Construction Company, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. 678-19-95, issued by the Department of Veterans Affairs (VA) Medical Center, Tucson, Arizona, for the construction of building wings connected to the nursing home health care unit.

We deny the protest.

The IFB stated that bids should be delivered to Building 5, Room 204 of the VA Medical Center by 3 p.m. on the amended bid opening date of September 19, 1995.<sup>1</sup> According to the sworn statements submitted by the agency, the contracting officer called the Naval Observatory on September 19 for the correct time and set VA's time/date stamp digital clock in Room 204 to that time (2:45 p.m.). At 2:50 p.m., the contracting officer stood at the doorway of Room 204 so that he could see the time/date stamp clock, as well as the doorway of Room 207A, the bid opening room. A contracting specialist stood at the doorway of Room 207A, less than 50 feet from Room 204, where she could see both the contracting officer at the doorway of Room 204 and the bid opening officer in Room 207A (the bid opening officer stationed herself in Room 207A at 2:55 p.m.). Two hand-carried bids were delivered

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<sup>1</sup>The amendment changing the date also stated that bid opening would be in Room 207A.

to Room 204 and stamped in at 2:55 p.m. At 2:58 p.m., the contracting officer announced to the contracting specialist the remaining time(2 minutes) until bid opening. A similar announcement was made at 2:59 p.m. When the time/date stamp clock changed to 3 p.m., the contracting officer announced the time to the contracting specialist, who in turn announced the time to the bid opening officer. The bid opening officer announced that the time for bid opening had arrived and that no additional bids would be accepted. The contracting officer joined the contracting specialist and the bid opening officer in Room 207A, and the agency began opening the bids received. A secretary who had been in Room 204 all along remained in that room.

The protester's representative entered Room 204 and placed a bid package on a desk. The protester's representative states that the time/date stamp clock displayed 2:59 p.m. when he entered Room 204, and that the clock changed to 3 p.m. shortly thereafter. He states that the secretary was the only other person in the vicinity, but that she had her back to the clock. The secretary states that the representative entered the room seconds after the contracting officer had announced 3 p.m. and left the room, and that the time/date stamp clock displayed 3 p.m. both when the representative entered the room and when she attempted to stamp the bid. Since the bid was too thick for the secretary to fit it into the stamping device, Nueva's representative grabbed a sheet of paper, stamped it, and handed it to the secretary. The time date stamp on this paper said 3 p.m.

The secretary then carried the bid to Room 207A. The bid opening officer was in the process of opening and reading the second bid when the secretary entered Room 207A with the protester's bid. The bid opening officer advised the secretary that the bid was late and could not be accepted.

Shortly thereafter, the protester's representative entered Room 207A with the protester's bid and stated that it had been timely submitted because he had delivered it by 3 p.m. The contracting officer stated that the bid was late. Neither the contracting officer nor the protester's representative had seen each other prior to the start of bid opening, and the contracting officer states that he did not know the identity of the bidder submitting the bid until after he had determined that the bid was late. The contracting officer accepted the bid with the stipulation that the agency would hold it unopened until the matter was resolved. After the agency denied Nueva's agency-level protest, this protest was filed. Nueva alleges that its bid is not late because it was submitted by the time stated in the IFB, but the agency commenced bid opening prior to that time.

Under Federal Acquisition Regulation (FAR) § 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. Bids received in the office designated in the IFB after the exact time set for opening are late bids. FAR § 14.304-1. The bid opening officer's

declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. J. C. Kimberly Co., B-255018.2, Feb. 8, 1994, 94-1 CPD ¶ 79; Swinerton & Walberg Co., B-242077.3, Mar. 22, 1991, 91-1 CPD ¶318.

Here, the clock upon which the bid opening officer relied to determine when the time for opening had arrived was the time/date stamp clock in Room 204. The contracting officer verified the time on this clock with the time stated by the Naval Observatory. When the contracting officer saw this clock change to 3 p.m., he announced the time. The bid opening officer relied upon this announcement to determine that the time for bid opening had arrived. Since the agency had verified the time on the clock, the bid opening officer had no reason to doubt the accuracy of the time; the agency thus reasonably relied on this clock to determine that the time for bid opening had arrived. See id.

Although the protester alleges that its representative delivered its bid when the clock read 2:59 p.m., it has not provided any evidence that would either corroborate this statement or cast doubt upon the agency's record of events. On the other hand, the sworn statements of the secretary and the contracting specialist corroborate the sworn statement of the contracting officer, and all are consistent with each other. Both the secretary in Room 204 and the contracting specialist at the doorway of Room 207A heard the contracting officer announce 3 p.m. The secretary states that Nueva's representative entered the room at 3 p.m. "in a matter of seconds" after the contracting officer had announced 3 p.m. and had exited to the bid opening room. Nueva's bid was stamped received at 3 p.m., which lends support to the secretary's account of the time that Nueva's bid was tendered. Other than his statement that he entered room 204 at 2:59 p.m., the sworn statements of Nueva's representative are consistent with the agency's account of events in that the representative states that the bid was stamped approximately 12 to 17 seconds after he entered the room, which would allow for the contracting officer's announcement and exit, the representative's entrance, and the stamping of the bid to occur within the same minute that the digital clock displayed 3 p.m. Finally, the protester has not suggested any reason why the contracting officer would announce 3 p.m. before the clock actually displayed 3 p.m., particularly after he had made the effort to verify the precise time. Accordingly, we think its clear from this record that Nueva delivered its bid after the bid opening officer reasonably declared the start of bid opening.

The protester alleges in the alternative that even if this is so, the IFB instruction for bidders to submit bids "by 3 p.m." means anytime before 3:01 p.m.,<sup>2</sup> and thus its bid

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<sup>2</sup>The protester specifically alleges that "3" means all of the time between 3 hours, 0 minutes and 0 seconds up through and including 3 hours, 0 minutes and 59 seconds because the IFB did not specifically state the time in terms of seconds.

cannot be considered late since it was received at 3 p.m. as indicated by the time/date stamp. We disagree. The bid opening officer reasonably declared the start of bid opening immediately upon learning that the bid opening clock had struck 3 p.m. See Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221. The decisive event in determining the time for bid opening is not the ticking of a clock; rather, it is the agency's reasonable declaration of the start of bid opening that demarcates the points in time at which a hand-carried bid will be determined either timely or late. Compare Carothers Constr., Inc., B-235910, Oct. 11, 1989, 89-2 CPD ¶ 338 (a bid submitted at the same instant the agency declared the start of bid opening is not late) and Amfel Constr., Inc., B-233493.2, May 18, 1989, 89-1 CPD ¶ 477 (bid submitted after clock struck the stated time for bid opening, but prior to agency's declaration of the start of bid opening, is not late) with Chattanooga Office Supply Co., *supra* (bid submitted seconds after, though during the same minute of, the exact time for bid opening, but after agency had declared the start of bid opening, is late). Since the bid opening officer had declared the start of bid opening while the contracting officer was at the doorway of Room 204, and since Nueva's representative did not arrive in Room 204 to submit Nueva's bid until after the contracting officer had left the doorway of that room and entered the bid opening room, Nueva's bid, submitted after the agency had reasonably declared the start of bid opening, was properly rejected as late. See Hi-Grade Logging, Inc., B-222230; B-222231, June 3, 1986, 86-1 CPD ¶ 514.

The protest is denied.

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of the United States