

DECISION



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

FILE: B-209459

DATE: April 13, 1983

MATTER OF: Dale Woods

DIGEST:

1. The Government acted improperly by changing bid opening room without amending the solicitation because original bid opening room was unoccupied and available. If the change was necessary, the Government should have, at minimum, telephonically advised all known bidders of the change or that bid opening would be postponed and a written amendment issued.
2. Secretary's statements were not sufficiently clear to put protester on notice that bid opening room had been changed and protester made reasonable and diligent effort to locate the bid opening room and did not significantly contribute to the delay. The Government's change of the bid opening room was the paramount cause of the protester's late arrival.
3. Where Government's improper action was paramount cause of protester's late arrival, consideration of protester's bid on two items for which no bids had been opened would not compromise the integrity of the competitive bidding system. However, where bids have been read on other items, late bid should not be considered on those items because to do so might compromise the integrity of the system.

Dale Woods protests the Department of the Interior, Bureau of Reclamation (Bureau), rejection of his bid as late under sales invitations Nos. 10-X0432 and 10-X0438 for the sale of Government buildings for offsite removal. Woods would have been the high bidder on item 2 of sale No. 10-X0432 and item 1 of sale No. 10-X0438. We sustain the protest in part and deny it in part.

025283

The invitations indicated that bids were to be delivered to the Bureau at 550 West Fort Street, Boise, Idaho, September 17, 1982, room 579, 2 p.m. The Bureau contends that the listing of room 579 was in error. The proper room was the contracting officer's office, room 526. The Bureau claims there was insufficient time to mail out an amendment. A single sign posted in the elevator area indicated that the bid opening would be in room 526.

Woods arrived at the Bureau at 1:30 p.m., which has been verified by Mr. and Mrs. Lynn S. Porter, the only other bidders to attend the bid opening, who saw Woods in the parking lot. The Porters saw the posted sign and found room 526 by 1:45 p.m.

Woods did not see the sign because it was posted on the same wall as the elevator he exited. Woods went to the regional director's office, he claims, at 1:40 p.m. The regional director's secretary did not note the time. Woods contends the secretary told him to go to room 579, the room listed in the solicitations. The secretary contends she had seen the posted sign, told Woods to go to room 526, and came from behind her desk to point him down the hallway toward room 526. The hallway leading from the director's office to room 526 also leads to room 579.

Woods went to room 579. It was unoccupied. He walked down the hall and returned to room 579 to make sure he had not made a mistake. He then went to the elevator area at which time he saw the sign. At 1:51 p.m., a young man, who claimed to work for the Bureau, offered to help Woods find room 526. They wandered the entire fifth floor and finally located the bid opening room, Woods claims, at 2:03 p.m. The contracting officer contends the time was 2:07. The bid was rejected as late.

A bidder has the responsibility of assuring the timely arrival of its bid to the place designated in the solicitation. However, 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. Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425; Avantek, Incorporated, 55 Comp. Gen. 735, 739-740 (1976), 76-1 CPD 75. The Government

has a duty to establish reasonable procedures for the timely receipt of bids. Sun International, B-208146, January 24, 1983, 83-1 CPD 78; Federal Contracting Corporation, 56 Comp. Gen. 737 (1977), 77-1 CPD 444; 48 Comp. Gen. 765 (1969). Once a time and place for the delivery of bids have been established, it should not be arbitrarily changed.

Woods contends that the change of the bid opening room without amending the solicitation or providing adequate directions constitutes improper Government action.

The Bureau contends that room 579 was the "incorrect" room and there was insufficient time to mail an amendment. However, room 579 was unoccupied and not being utilized. While room 579 may not have been as convenient as the contracting officer's own office, the Bureau has failed to explain why, given the insufficient time for amending the solicitation and the apparent availability of room 579, the Bureau did not accept bids in that room. If room 579 was unavailable, the contracting officer should have, at a minimum, telephoned all known bidders and advised them of the change of location, or advised that bid opening would be postponed and a written amendment designating a new time and place would be issued. Avantek, Incorporated, *supra*; and see Culligan Inc., 58 Comp. Gen. 307, 310 (1979), 79-1 CPD 149. Under these circumstances, we find the Bureau's actions to have been improper.

The Bureau contends that the fact that the regional director's secretary directed Woods to room 526 and Woods actually saw the elevator sign at 1:51 p.m. (9 minutes before bid opening) absolves the Government of any responsibility. This argument pertains to the issue of whether the Bureau's improper action was the "paramount" cause of Woods' late arrival and requires that we compare the Bureau's and protester's actions and determine whether the protester significantly contributed to the delay by not acting reasonably and diligently. Avantek, Incorporated, *supra*; see Visar Company, Inc., 62 Comp. Gen. (B-208701, January 31, 1983), 83-1 CPD 100; Good Hope Refineries, Inc., B-186641, August 4, 1976, 76-2 CPD 126. The application of this standard is illustrated in the following cases.

In Fredericks Rubber Company, 51 Comp. Gen. 69 (1971), the invitation for bids provided that hand-carried bids would be received in the depository located at "Receptionist's Desk 2nd Floor, Building 12." Trenton Textile Engineering & Manufacturing Company's representative attempted to deliver its bid to the receptionist. However, the depository had been moved to in front of the bid room. The receptionist stated that she told the representative to walk to the end of the hall to the box marked "Bids." Directions were also posted on a sign at the receptionist's desk, which the representative did not see. The representative stated that the receptionist told him to take the bid "in the back and put it in the box." The representative wandered around the area and put the bid in the only thing that looked like a depository: a gear box which was on display. We determined that while the representative "may not have exercised the best judgment," the primary responsibility for the mistake was the Government's movement of the depository and the receptionist's vague directions.

In LeChase Construction Corporation (LeChase), B-183609, July 1, 1975, 75-2 CPD 5, the bid opening room was changed without amending the solicitation, which contained three different room numbers. Several signs placed on the corridor walls, including the elevator area, announced the change. LeChase proceeded to one of the rooms designated in the IFB for the receipt of bids. The door was locked and there was no sign present. A person in an open office across the hall directed LeChase to the other designated room. The room was locked and again there was no sign. While LeChase searched for assistance, an individual stepped out of the new bid opening room and directed LeChase inside. We determined that the inconsistency in the solicitation and the change of room location without amending the solicitation could have led to the late submission and sustained the protest.

The regional director's secretary claims to have seen the sign at the elevator. The sign indicated that bid opening would be in room 526. However, it did not indicate that the room had been changed. It thus appears that the secretary had no knowledge that the solicitation referred to room 579. Woods had the solicitation with him and claims the secretary directed his attention to it. While it appears that she actually told him to go to room 526, Woods, while looking at the solicitation, thinks he heard her say that he should go to room 579. Her contradictory statement,

though well intended, was not sufficiently clear to put Woods on notice that the solicitation he was relying on was incorrect. See Visar Company, Inc., supra (regarding conflicting delivery instructions). Her statement was comparable to the receptionist's vague statement in Fredericks Rubber Company, supra. The secretary's pointing gesture was similarly vague. As we noted above, while pointing towards room 526, the secretary was also pointing towards room 579, as well as most of the other rooms on the fifth floor.

The rooms were not numbered in consecutive order. The floor is instead divided into odd- and even-numbered sections. The logic of this arrangement is not readily apparent without the assistance of the office locator map, which was posted near the elevator area. Woods relied on the assistance of a Bureau employee and did not see the locator. We note that the bidder in LeChase relied on a Government employee, and that the bidders in both Fredericks Rubber Company and LeChase did not see posted signs. Given the time constraints and nonconsecutive order of the rooms, Woods' reliance on an employee who claimed to be knowledgeable was not unreasonable.

The Bureau claims that room 526 should nevertheless have been found within 9 minutes because the fifth floor hallway can be circled at an unhurried pace in 2.5 minutes. This argument assumes that a reasonable person would not stop and attempt to comprehend the room numbering. Moreover, Woods was accompanied by a Bureau employee who had his own ideas as to the location of room 526.

We conclude that Woods acted reasonably and diligently and did not significantly contribute to his late arrival. The paramount cause for Woods' late arrival was the Bureau's change of the bid opening room.

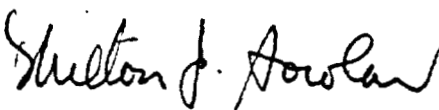
The final issue is whether the consideration of Woods' bid would compromise the integrity of the competitive bidding system. We must ascertain whether Woods may have had an opportunity to change his bid after the exposure of the timely received bids. L. V. Anderson and Sons, Inc., B-189835, September 30, 1977, 77-2 CPD 249. Two bids had been opened, read and recorded prior to Woods' arrival. One bid was on item 4. The other bid was on item 2. Bids on items 1 and 3 had not been read.

The contracting officer has no specific information regarding whether Woods actually heard the bids which had been read, but notes that one end of Woods' bid envelope was not sealed. Woods notes that the bid read on item 2 was \$1,593.95 lower and the bid read on item 4 was \$3,805 higher than his bids. He argues the wide price disparity precludes any suspicion that he may have heard the bids. Woods also notes that the bid room is a partitioned area within a room and it was physically impossible for him to hear the bids from the hallway.

Woods claims he was in the hallway and not close enough to the bid opening room to hear the bids on items 2 and 4 and while we have no reason to question Woods' integrity, the importance of maintaining the integrity of the competitive bidding system requires clearer evidence than Woods has provided. Once bids have been opened on a bid item, we do not find that other bids should be considered.

However, consideration of Woods' bids on items 1 and 3 clearly would not compromise the integrity of the competitive bidding systems. The four items were for separate awards on unrelated buildings. Even if Woods had knowledge of the bids opened on items 2 and 4, this information could not have given him any advantage in bidding on items 1 and 3.

The protest is sustained as to the consideration of Woods' bids on items 1 and 3. The protest is denied as to items 2 and 4.

for 
Comptroller General
of the United States