

DECISION

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

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FILE: B-211918**DATE:** November 21, 1983**MATTER OF:** Larry Carlson & Associates, Inc.**DIGEST:**

1. In determining whether a hand-carried bid was timely submitted, all relevant evidence in the record may be considered.
2. Bid opening officer's declaration that bid opening time has arrived is the criterion for determining lateness absent clear evidence in the record to show that the time was incorrect.
3. Protest that bid was timely because the time/date stamp showed that it was received by the bid opening deadline is denied where the evidence submitted by the procuring agency shows that the time/date machine was 3-4 minutes slow.
4. Bid opening officer's improper opening of a late bid does not provide a basis on which bid may be accepted.
5. Since bid was late when tendered to the contracting officer, contracting officer's refusal to accept the bid did not cause the bid to be late.

Larry Carlson & Associates, Inc. (Carlson), protests the rejection of its bid as late under the Department of the Air Force (Air Force) invitation for bids (IFB) No. F41612-83-B-0012. Carlson alleges that bid opening was commenced before the time specified for bid opening in the IFB.

The protest is denied.

The IFB specified that bid opening would take place at 3 p.m., central time, on April 11, 1983, and that hand-carried bids should be delivered to the Base Contracts Office, Distribution Desk, Building 1664, Sheppard Air Force Base, Texas. According to Carlson, when he arrived in Building 1664, Mr. McNeely, Chief-Contract Administration Branch, advised him that since it was almost 3 p.m., he

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should take his bid directly to the room where bid opening would be held. Carlson states that the clock outside Mr. McNeely's office indicated it was 2:58 p.m. Carlson went directly to the bid opening room. However, because the bid opening officer already had announced that the time for bid opening had arrived, he refused to accept Carlson's bid. Carlson returned to the distribution room where Mr. McNeely stamped Carlson's bid with the time/date stamp. The stamp showed that it was 3 p.m. A clerk then brought the bid to the conference room where it was accepted and opened.

After all the bids were opened, the bid opening officer discovered that Carlson submitted the apparent low bid. The bid opening officer refused to take any further action on the procurement until an investigation was conducted to determine whether Carlson's bid should be rejected as late.

The Air Force determined Carlson's bid could not be accepted based on its finding that due to a power outage in building 1664 on the morning of April 11, the time/date stamp in the distribution center was approximately 3-4 minutes slow. Thus, the Air Force explains that although the time/date stamp on Carlson's bid read 3 p.m., if the time/date clock had been accurate, the stamp would have indicated that the bid was received at 3:03 or 3:04 p.m. The Air Force also cites Defense Acquisition Regulation (DAR) § 2-402(a) (1976 ed.), which authorizes the bid opening officer to determine when the time for bid opening has arrived.

Carlson protests that his bid was submitted on time because according to the time/date stamp, the bid was received in the distribution center at 3 p.m. Carlson relies on section "P," subparagraph (c)(ii), of the IFB to support its contention that the 3 p.m. time/stamp must be accepted as the time the bid was received. This provision, taken from DAR § 7-2002.2(c)(ii), states that "the time of receipt at the government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation." This provision, however, does not control the present factual situation. Rather, DAR § 7-2002.2(c)(ii) is part of the late bid clause and is read in conjunction with the rest of section 7-2002.2 when it is necessary to determine whether a mailed bid which was received late in the office designated in the solicitation for the receipt of bids due to government mishandling after the bid was timely received in another division of the government installation. Lockley Manufacturing Co., Inc., B-195589, January 4, 1980, 80-1 CPD

15. Where, as here, the issue is whether a hand-carried bid was timely received, all relevant evidence in the record may be considered.

The relevant time for determining whether a bid was timely received by the government installation is that time when the bidder relinquishes possession of his bid to the government. See MACETO, Inc., B-207878, September 30, 1982, 82-2 CPD 300. Thus, in the present case, we must decide whether Carlson's bid was timely when it was submitted to Mr. McNeely after Carlson first returned from the conference room.

The record shows that the bid opening officer declared that the 3 p.m. bid opening time had arrived before Carlson submitted his bid to Mr. McNeely. The bid opening officer is authorized to declare bid opening time has arrived by DAR § 2-402(a). Carlson's allegation that DAR § 2-402(a) may not be relied upon because it was not referred to in the solicitation is without merit. The procedures which are used in soliciting bids are prescribed by departmental regulations and they are applicable to all procurements to the extent stated in the regulation. Gross Engineering Company - Reconsideration, B-193953, April 24, 1979, 79-1 CPD 285. Bidders are charged with constructive notice of these regulations and the fact that a solicitation does not refer to them does not affect their applicability.

In accordance with DAR § 2-402(a), this Office has found that the bid opening officer's declaration that the time for bid opening has arrived is the criterion for determining if a bid is late unless there is evidence which clearly indicates that the time was incorrect. MACETO, Inc., supra. The Air Force has informed us that the bid opening officer relied on his watch to announce that the 3 p.m. deadline was reached. To establish that the bid opening officer incorrectly determined the time, Carlson emphasizes that the bid opening officer already had announced bid opening before Carlson's bid was time-stamped 3 p.m. in the distribution center. Carlson also notes that at the time he brought his bid to the conference room, the clock outside Mr. McNeely's office indicated it was 2:58 p.m.

To support its position that Carlson's bid was submitted after the 3 p.m. deadline, the Air Force has submitted affidavits which were filed by base personnel. One affidavit, filed by the Chief of Planning, Civil Engineering Squadron, verifies that, on April 11, the electrical power in building 1664 was shut off for 3-4 minutes. A second

affidavit, filed by a purchasing agent who was present when Mr. McNeely time-stamped Carlson's bid states that, at that time, the battery-operated clock above her desk indicated it was 3:03 p.m. Finally, two persons who were present when Carlson entered building 1664 filed affidavits. These persons state that, according to their watches, Carlson arrived at 3 p.m.

Given the entire record, we believe the evidence more reasonably supports the conclusion that Carlson submitted his bid to Mr. McNeely after the 3 p.m. deadline. See Hatch Construction & Paving, B-204810, November 4, 1981, 81-2 CPD 387; Fire Trucks Inc., B-185743, May 12, 1976, 76-1 CPD 316. Thus, we find that the Air Force properly rejected Carlson's bid as late.

Carlson also has alleged that its bid should not have been rejected because the bid opening officer accepted it and publicly read it. Pursuant to DAR § 2-303.3 (1976 ed.), a bid which is submitted late should be held unopened by the contracting officer until an award is made and then it should be retained with any other unsuccessful bids. However, the fact that a contracting officer improperly opens a late bid does not negate the rule that a late bid must be rejected. Gross Engineering Company, *supra*. Thus, the fact that Carlson's bid was opened does not provide a basis on which the bid may be accepted. This rule applies even if, as Carlson alleges, the bid opening officer knew that he was opening Carlson's bid. Specialty Maintenance and Construction, Inc., B-205738, March 4, 1982, 82-1 CPD 200.

Since Carlson's bid was submitted late, it only may be accepted if the paramount cause of the late receipt was improper action by the Air Force. Moore's Cafeteria Services, Inc., B-205943, January 12, 1982, 82-1 CPD 29. In this respect, we note that the bid opening officer refused to accept Carlson's bid when Carlson first arrived in the conference room. The record shows, however, that at that time the bid opening officer already announced that the time for bid opening had arrived. Since we have concluded that the bid opening officer did not begin bid opening prior to the 3 p.m. deadline, Carlson's bid already was late when he arrived in the conference room. Thus, the contracting officer's refusal to accept Carlson's bid did not contribute to the bid's lateness.

The protest is denied.

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