

**DECISION**

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

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**FILE:** B-216891

**DATE:** April 18, 1985

**MATTER OF:** Chestnut Hill Construction, Inc.

**DIGEST:**

1. GAO denies a complaint against a local housing authority's rejection of a late bid that was hand carried to the designated office after the scheduled opening time when there is no evidence that the lateness was due to improper government action.
2. Importance of maintaining the integrity of the competitive bidding system outweighs any monetary savings that would be obtained by considering a late bid.

Chestnut Hill Construction, Inc. complains of the award of a contract to Eckman Construction Company under project No. NH36-P008-003 of the Housing Authority of Rochester, New Hampshire. The contract to construct the Wyandotte Mill Project, which is low-rent, multifamily housing for the elderly, is funded by the Department of Housing and Urban Development (HUD) under the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437 (1982) and the Department of Housing and Urban Development Act, as amended, 42 U.S.C. § 3531. Chestnut Hill contends that the Housing Authority improperly rejected its bid as late.

We deny the complaint.

At the outset, we note that until recently, we have accepted complaints concerning procurements by local housing authorities and other recipients of federal financial assistance to ensure that contracts awarded by them comply with any requirements of law, regulation, or the terms of the agreement between the federal government

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and the recipient of funds. We discontinued our consideration of such complaints on January 29, 1985. See 50 Fed. Reg. 3978 (1985); The George Sollitt Construction Co., B-218101, Feb. 6, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 CPD ¶ 150. Since Chestnut Hill's complaint was filed before that date, however, we will review it.

The record here indicates that bid opening was scheduled for 2 p.m. on September 11, 1984. A representative of Chestnut Hill signed in at the Housing Authority's administrative office at 1:58 p.m., but rather than submitting a bid at that time, went into another office and telephoned Chestnut Hill to obtain a final quote. She then prepared the quote sheet and bid bond, proceeded to the room where bids were to be opened, and placed the sealed bid on the table before the Housing Authority chairman. HUD reports that this occurred between 2:01 and 2:03 p.m. The chairman opened three bids, including the apparent low one from Chestnut Hill. After the second-low bidder, Eckman, protested that Chestnut Hill's bid should not have been opened because it had not been submitted by 2 p.m. as required by the solicitation, the Housing Authority rejected it as late.

Chestnut Hill states that the chairman approached its representative while she was on the telephone and said, "I must have your bid now or it will be too late." The firm contends that the bid should have been accepted since it was submitted before the chairman announced formally that no more bids would be accepted or, alternatively, that the chairman waived its lateness by opening it along with the other two timely-submitted bids. Chestnut Hill further contends that the Housing Authority is authorized to excuse any irregularities in the bidding and should consider its bid, even if late, because of a potential \$110,000 savings to the government.

The parties have not cited, and we are not aware of, any New Hampshire statutes concerning competitive bidding on municipal contracts. In the absence of contrary state law, our Office generally applies basic tenets of federal procurement law to cases such as this. See E.P. Reid, Inc., B-189944, May 9, 1978, 78-1 CPD ¶ 346. In addition, we will consider the policies set forth in the HUD Handbook entitled "Low-Rent-Public Housing Construction," which require any bid received after the time set for opening to be rejected and returned unopened.

Bids that are in the hands of the bid opening officer or any designated official by the scheduled opening time may be considered for award. See Hyster Co., 55 Comp. Gen. 267 (1975), 75-2 CPD ¶ 176. The absence of formal announcement that no further bids would be accepted is irrelevant, since a bid opening officer has no authority to accept a bid clearly submitted after the deadline. See William F. Wilke, Inc., 56 Comp. Gen. 419 (1977), 77-1 CPD ¶ 197; Specialty Maintenance and Construction, Inc., B-205738, Mar. 4, 1982, 82-1 CPD ¶ 200. The time when a bid is submitted is determined by the time that the bidder relinquishes control of the bid. Until that time, even if the bidder is already at the designated bid opening site, the bid has not been submitted as required by the solicitation. See Larry Carlson & Associates, Inc., B-211918, Nov. 21, 1983, 83-2 CPD ¶ 599. The only time that a late hand-carried bid may be accepted is where the lateness is due to improper government action and where its consideration will not compromise the integrity of the competitive system. See Moore's Cafeteria Services, Inc., B-205943, Jan. 12, 1982, 82-1 CPD ¶ 29.

Here, it is clear that Chestnut Hill's bid was late, and there is no evidence that the lateness was due to improper action on the part of the Housing Authority. Further, the fact that the chairman opened the late bid does not mandate consideration of it. Larry Carlson & Associates, Inc., *supra*; Gross Engineering Co.-- Reconsideration, B-193953, Apr. 24, 1979, 79-1 CPD ¶ 285. Therefore, the Housing Authority properly rejected the bid as nonresponsive.

Chestnut contends that acceptance of its low bid would result in a substantial savings to the government. Allowing acceptance of late bid under these circumstances would be detrimental to the competitive bidding system, however, and we have often stated that maintaining the integrity of the competitive bidding system outweighs any monetary savings that would be obtained by consideration of a late bid. Northwest Instrument, B-200873, Nov. 18, 1980, 80-2 CPD ¶ 373.

The complaint is denied.

*Larry D. Van Cleave*  
for Comptroller General  
of the United States