



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

B-176839

30202
November 17, 1972

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Electro-Mechanical Industries, Inc.
250 East Stenger Street
San Benito, Texas 78586

Attention: Mr. R. K. Hothem
President

Gentlemen:

Further reference is made to your telegram of August 23, 1972, as supplemented by subsequent correspondence, protesting against the rejection of your bid under Invitation for Bids (IFB) F41608-73-B-0020, issued by Kelly Air Force Base, Texas, on July 31, 1972.

The procurement is for 2,379 transmitter modules and 2,534 receiver modules, components of the RT 10 survival radio. The record indicates your firm was originally added to the bidders list in early August 1972 as a result of a telephone call to the procurement activity, in which you requested a bid set. For some unknown reason, your address was erroneously listed as San Benito, California, instead of San Benito, Texas, your correct address. You received the invitation in due course and began preparation of your bid. Due to an urgent requirement for the items, the procurement activity issued amendment 0001 to the IFB on August 8, 1972, which changed the bid opening date from August 30, 1972, to August 21, 1972, at 1:30 p.m., central time. The amendment was forwarded to all firms on the bidders list. Because your address was incorrectly listed, your amendment was misdirected to California from where it was redirected back to Texas. This delay resulted in your not being informed of the requirement for earlier bid submission until receipt of the amendment at 9:15 a.m., on August 21, 1972, the new bid opening day.

Inasmuch as there were only about four hours remaining until bid opening time, you contacted the contracting officer's representative by telephone and informed him of the problem and requested an extension of the bid opening date. He denied the request for an extension and you then inquired as to how you should submit your bid in view of the limited time remaining. It is reported that the contracting officer's representative advised you to use whatever means

were available to submit your bid. You transmitted your bid over the Telex system, which arrived at the procurement activity just prior to bid opening time. The contracting officer rejected your telegraphic bid since the IFB did not authorize such method of bidding. You also mailed a confirmatory bid at 4:30 p.m. on August 21, 1972, which was classified as a late bid by the contracting officer.

You contend that the misdirection of your copy of the amendment by the procurement activity caused the delay in its delivery which effectively prevented you from submitting your bid on a timely basis. This situation, in your opinion, comes within the purview of subparagraph (c) of Armed Services Procurement Regulation (ASPR) 2-208 which reads as follows:

"(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, whether or not a pre-bid conference is held, if such information is necessary to the bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids."

You maintain that since you did not receive the amendment announcing an earlier bid opening date until approximately four hours prior to bid opening time, you were prejudiced thereby and no award should be made on the invitation because of the procuring activity's noncompliance with the mandatory requirements of ASPR 2-208(c). Subparagraph (c) pertains to incorporating in an amendment any material information which was previously given to a prospective bidder. This does not appear to be a circumstance of your case. We believe that subparagraph (a) which concerns changes, including a change in the opening date, is the provision of ASPR 2-208 having direct application to your situation. Subparagraph (a) provides:

"(a) If after issuance of an invitation for bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a

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defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids, using Standard Form 30 (see 16-101), whether or not a pre-bid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room."

While this subparagraph requires that the amendment be sent to everyone to whom invitations have been furnished, we have held that such provisions do not make the procurement activity an insurer of the prompt delivery of amendments to each prospective bidder. The procurement activity discharges its responsibility when it issues and dispatches an amendment in sufficient time to permit all the prospective bidders time to consider such information in submitting their bids, notwithstanding the fortuitous loss or delay of a particular individual's copy of the amendment. The risk of nonreceipt of invitations and amendments thereto is upon the bidders. While the Government should make reasonable efforts to see that interested bidders receive timely copies of the invitation for bids and amendments thereto, the fact that there was a delay in a particular case, where the provisions of ASPR 2-208 have been complied with, does not warrant the acceptance of a bid or a modification thereof after the time fixed for opening, nor does it require the resolicitation of the procurement. 40 Comp. Gen. 126, 128 (1960); B-175409, April 14, 1972; B-174259, January 5, 1972; B-174230, November 17, 1971; B-167921, December 1, 1969.

We have also held that the propriety of a particular procurement must be determined from the Government's point of view upon the basis of whether adequate competition and reasonable prices were obtained, not upon whether every possible prospective bidder was afforded an opportunity to bid. B-147515, January 12, 1962. While it is unfortunate that your address was not correctly recorded on the bidders list, we do not find anything in the record to indicate that the error was other than an inadvertent mistake, or that it was occasioned by any deliberate attempt on the part of the procuring personnel to exclude you from participating in the procurement. In such circumstances, although we recognize the resulting hardship which may be experienced by your firm, it has been our consistent position that the nonreceipt or delay in receiving bidding documents by a prospective bidder does not require cancellation or amendment of the invitation. 34 Comp. Gen. 684 (1955).

Your remaining contention is that your telegraphic bid should have been accepted by the contracting officer at bid opening, since

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his representative had earlier that same day, upon learning of the delayed delivery of your amendment, advised you to use whatever means were available to transmit your bid. During that telephone conversation, you told the contracting officer's representative that telegraphic means was about all there was available for transmitting your bid within the remaining time. You believed his failure to respond was tacit approval that telegraphic means would be acceptable.

We note that paragraph C-5(b) of the Solicitation Instructions and Conditions entitled "Submission of Offers" states that telegraphic offers will not be considered unless authorized by the solicitation, which was not done in the subject IFB. We have uniformly held that telegraphic bids, unless authorized by the invitation for bids, should be rejected, and we see no reason why this rule should not be applied in the present case. 40 Comp. Gen. 279, 280 (1960); B-169719, August 25, 1970; B-161595, August 17, 1967; B-160868, April 13, 1967. In addition, see paragraph C-3, Explanation to Offerors, of the Solicitation Instructions and Conditions, which provides that oral explanations or instructions given before the award will not be binding unless furnished all prospective offerors as an amendment of the solicitation.

Inasmuch as your formal bid was not mailed until several hours after the time for bid opening, the contracting officer determined that it could not be considered. Paragraph C-8 of the Solicitation Instructions and Conditions entitled "Late Offers and Modifications or Withdrawals" provides that bids received after bid opening, but before award, will not be considered unless the late receipt of the bid is excusable under the provisions of that paragraph. None of the enumerated factors excusing late receipt was present in your case. Under the circumstances, we find no basis for disturbing the administrative conclusion that your bid was inexcusably late. B-160868, April 13, 1967.

While it is regretted that you did not receive your copy of the amendment in sufficient time to respond in the prescribed manner by the time and date fixed for the opening of bids, our review of the record does not establish a legal basis for this Office to object to an award under this IFB.

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Accordingly, your protest is denied.

Very truly yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States -