

**DECISION**

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

*2.000  
Proc. II*

*8075*

FILE: B-190568

DATE: October 24, 1978

MATTER OF: Pacific Contractors, Inc.

**DIGEST:**

Contracting officer acted reasonably in affording bidders less than one day to consider the effect of an amendment to an IFB when the amendment was not complex, all bidders were local firms, and no bidder (including the protester) objected prior to bid opening to its being held as scheduled.

Pacific Contractors, Inc. (Pacific) has protested the award of a contract by the Department of the Army, Fort Clayton, Canal Zone. The specific basis of the protest is that the Army issued an amendment to solicitation No. DAKF71-77-B-0104 so close to the time set for bid opening that prospective bidders had insufficient opportunity to consider the amendment's impact on their bids.

The essential facts of the case are not in dispute. The solicitation was issued on August 18, 1977 and requested bids for painting various buildings in the Pacific (Lot I) and Atlantic (Lot II) areas of the Canal Zone. Lot I was divided into Items 0001 through 0005 and Lot II into Items 0006 through 0009. Amendment 0002, issued on September 8, 1977, added, inter alia, option item 0010 consisting of buildings located at Corozal to Lot II (Atlantic Area). Corozal, however, is on the Pacific side of the Canal Zone and, more logically, should have been added as an option to Lot I. Amendment 0003, issued September 15, 1977, made some specification changes and set the bid opening date as September 23, 1977 at 10:00 A.M.

At sometime before 3:30 P.M. on September 22, 1977, two prospective bidders informed the contracting officer that option Item 0010 (Corozal) should be evaluated with Lot I covering the Pacific Area and not, as the face of

the solicitation indicated, with Lot II. The contracting officer had previously determined that no bidders other than those firms presently doing business in the Canal Zone would be submitting bids. On the strength of that determination, he attempted to contact all prospective bidders by telephone to inform them that Corozal would be evaluated with respect to Lot I and not Lot II. He reached three out of the five ultimate bidders. He did not reach Pacific, because Pacific was no longer at the telephone number listed on its Bidders List application form.

At 4:30 P.M. on the same day the contracting officer determined in writing that an amendment was to be issued and that "in view of consensus of opinion among prospective bidders, \* \* \* an extension of bid opening is not required."

By the next morning, the bid opening date, the contracting officer had prepared Amendment 0004 and began reading it over the telephone by 7:30 A.M. to the prospective bidders. This continued until 9:00 A.M. when all prospective bidders but Pacific had been reached by telephone or had read the amendment at the procuring activity's offices.

Between 9:00 A.M. and 9:50 A.M. Pacific's representative arrived for the bid opening. The record indicates that he was given the opportunity to read the amendment, but there is no indication that before bid opening he expressly protested any award of a contract if it were made under the provisions of amendment 0004. On September 26, 1977, Pacific protested to the agency any award which recognized the validity of Amendment 0004, because that amendment effectively displaced Pacific as the low bidder for Lot I. Award was made on September 27, 1977.

It is Pacific's position, essentially, that the Army violated Armed Services Procurement Regulation (ASPR) (now Defense Acquisition Regulation (DAR)) § 2-208(c) (1977 ed.), which states that:

"(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."

The Army's position is that the information was not material, because it merely restated the obvious fact that Corozal is on the Pacific side of the Canal Zone and, therefore, more properly to be evaluated in Lot I rather than Lot II. Thus, the contracting officer concluded that the amendment could not affect bid prices, which, according to the contracting officer, was borne out by the fact that none of the bidders changed its price for Item 0010. In this regard Pacific has consistently maintained that it would have incurred higher costs in performing the Corozal work under the solicitation as originally structured than it would under the amended solicitation. Thus the parties differ as to whether the amendment was sufficiently material so as to impose the duties set forth in ASPR/FAR § 2-208(c). However, we need not decide that issue in view of our conclusion, discussed below, that there was adequate time for consideration of the amendment.

The record shows that Pacific's president was notified of the amendment upon his arrival at Fort Clayton during the hour prior to bid opening. He did not object to the timing of the amendment prior to bid opening or during the next two and one-half hours during which the bids were being opened and tabulated, although he now claims that the amendment had a \$6,000 impact upon his price of \$27,600 for the Corozal work. Pacific alleges that had it been afforded more time to consider the amendment it could have reduced its bid upon the Corozal items by \$6,000, or 22 percent.

This figure represents the cost of an additional foreman and the rental of an additional truck plus gasoline for the term of the contract.

The buildings to be painted under this contract are located in two distinct groups at opposite ends of the Panama Canal approximately 40 miles apart. As originally issued the IFB included Fort Clayton, Curundu, Fort Kobbe, Albrook and PAD Area and Fort Amador -- all on the Pacific side -- in Lot I. Fort Davis, Fort Gulick, Coco Solo and Fort Sherman -- all on the Atlantic side -- were in Lot II. Corozal is on the Pacific side within a few miles of the installations in Lot I; its inclusion by Amendment 0002 in Lot II was by mistake and had no logical explanation. Under these circumstances, and in view of the impact which this erroneous amendment is now alleged to have had upon Pacific's bid, we believe it unreasonable of Pacific not to have questioned it when formulating its bid.

When the error was brought to the contracting officer's attention by other bidders, he immediately sought to rectify it by a simple amendment which the contracting officer was able to furnish four-fifths of the bidders (all local firms) sufficiently in advance of the bid opening that it appears to have caused no difficulty for them. The last firm to be notified of the amendment was Pacific, and it appears that this resulted from Pacific's failure to provide Fort Clayton with a current telephone number. Even Pacific was advised of the amendment sometime during the hour preceding bid opening. No bidder, including Pacific, objected prior to the bid opening to its being held as scheduled. Under these circumstances, we believe the contracting officer acted reasonably in not postponing the bid opening.

Pacific's protest is therefore denied.

  
For The Comptroller General  
of the United States