

Proc. LAW I (45)
W. Wotherspoon



DECISION

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

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FILE: B-192905

DATE: January 30, 1979

MATTER OF: CompuServe (CNR 1009)

DIGEST:

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[Protest involving Allegation that

Prospective offeror did not receive amendments in timely manner] due to agency's inadvertent misaddressing. Protest against agency denial of prospective offeror's request for extension of closing date to compensate for late receipt of amendments is denied where there was no conscious or deliberate attempt to preclude protester from competing, and adequate competition was obtained.

(CNR 1009)

CompuServe has protested the refusal of the Department of Health, Education, and Welfare (HEW) to extend the closing date for initial proposals by 6 weeks, under request for proposals (RFP) No. 51-78-HEW-OS.

The RFP was issued on July 3, 1978, and mailed to CompuServe at this address:

CompuServe
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Amendment No. 1 was also mailed to that address on July 17, 1978. At that time the bidders list was retyped and CompuServe's "zip code" was inadvertently changed through a clerical error. While amendments 1 through 7 were mailed, they were never delivered to CompuServe due to the error.

CompuServe learned informally of a bidders conference regarding the procurement and contacted HEW on September 14, 1978. At that time, the above facts became known to CompuServe and HEW. HEW provided CompuServe with the missed amendments, but refused CompuServe's request for a 6-week extension of the

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closing date for initial proposals, which had already been extended, for other reasons, from the original closing date of August 14 to October 2. Amendment No. 8, extending the due date to October 10, was mailed to CompuServe's correct address on September 21 and was received by it. CompuServe did not submit a proposal.

CompuServe basically argues that it was improperly prevented from submitting an offer due to the incompetence of HEW in misaddressing the amendments, and that it should now be permitted to submit an offer.

CompuServe also states that the United States Postal Service informed it that the incorrectly addressed mail was returned to HEW. CompuServe contends that HEW should have corrected the situation when the mail was returned.

HEW admits that it made an inadvertent clerical error which prevented CompuServe from receiving the amendments in a timely manner. HEW argues that if CompuServe really wanted to submit a proposal it would have either submitted one or contacted HEW by the original closing date. HEW also contends that CompuServe should have had sufficient time to submit a proposal once it received the amendments, since it should have had a major portion of its proposal already completed. HEW denies that the incorrectly addressed amendments were returned to it. Finally, HEW quotes the following passage from Target Communications, B-191137, May 10, 1978, 78-1 CPD 356, in support of its determination to not extend the due date for proposals:

"Target argues that because it did not receive the amendments at the same time as the other bidders, an extension of the bid opening date should have been granted. However, the risk of nonreceipt of invitations and amendments is upon the bidders. A. Brindis Company, Inc., B-187041, December 9, 1976, 76-2 CPD 477. 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 loss or delay of a particular individual's

copy of the amendment. Kennedy Van and Storage Company, Inc., B-189220, August 19, 1977, 77-2 CPD 130.

"If a bidder fails to receive a material amendment to a solicitation, we would not require cancellation and resolicitation unless failure to receive the amendment is the result of a conscious and deliberate effort by the contracting agency to exclude the bidder from participating in the competition. * * *" (Emphasis added.)

CompuServe responded to HEW's arguments in the following manner. CompuServe states that it exercised all reasonable efforts to keep informed of progress in the procurement by requesting in writing and by telephone that all information be sent to it. According to the protester, it did not file a proposal or complete a major portion of one by the original due date because, based on the solicitation up to the last amendment it received, it had decided not to compete. However, once it received the missed amendments it determined that it could compete successfully, but realized that it then did not have sufficient time to prepare a proposal in light of the amendments. Finally, CompuServe argues that Target Communications, supra, is not applicable, because in that case the nonreceipt of the amendments was beyond the agency's control, while here HEW was directly responsible for the problem.

It is our opinion, however, that Target Communications, supra, states the rule of law applicable to this case. While it is not clear whether the agency was at fault in Target, in 52 Comp. Gen. 281 (1972), we considered a case where a prospective bidder's address was erroneously listed on the bidders list. The incorrect address caused the bidder not to receive timely notice of the new bid opening date. The bidder called the procuring activity and requested that the bid opening date be extended. The request was denied. We sustained the agency's refusal to extend the bid opening date on the following basis:

"* * * 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. * * *

"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)." Id. at 283-284.

While this case involved a formally advertised solicitation, the law stated applies equally to negotiated procurements. See, e.g., Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. We see nothing in the record to

indicate, nor does CompuServe allege, that there was a deliberate attempt to prevent CompuServe from submitting a proposal. Since five offerors did submit proposals, it appears that adequate competition has been obtained. Consequently, HEW's denial of CompuServe's request for an extension of the closing date was not improper.

Accordingly, the protest is denied.

P. A. K. 114
Deputy Comptroller General
of the United States