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**DECISION**



11854 PL-1  
Mr. K. L. ...  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-195445

**DATE:** October 29, 1979

**MATTER OF:** E&I, Inc.

**DIGEST:**

IFB set bid opening date as July 11, 1979. Amendment to IFB mistakenly contained bid opening date of August 11, 1979. Procuring activity sent corrective telegrams and confirming copies to all prospective bidders when it became aware of error 8 days prior to July 11 opening. Protester, which allegedly received telegram only 2 days before bid opening, and three of 34 other prospective bidders requested delay of bid opening. Agency refusal to delay was not improper since all bidders were treated fairly and equally, and adequate competition (two bids) and reasonable price were obtained.

The Army Corps of Engineers (Corps) issued invitation for bids (IFB) DACW17-79-B-0039 for canal deepening and structure addition as part of the continuing construction of the central and southern Florida flood control project. The IFB specified July 11, 1979, as the bid opening date. Amendment number 1 to the IFB, dated June 29, 1979, contained a typographical error, by setting forth August 11, 1979, as the date for bid opening. E&I, Inc. (E&I), the protester, received amendment number 1 on July 2, 1979. The error was called to the Corps' attention on that date. On July 3, 1979, the Corps sent amendment number 2 by telegram to 34 prospective prime contractors, affirming July 11, 1979, as the correct date for bid opening. Confirming copies were mailed to those firms on that day.

E&I allegedly received amendment number 2 on July 9, 1979, 2 days prior to bid opening. (The telegraphic request to the Corps for postponement of bid opening advised that amendment number 2 was

received on July 5, 1979.) E&I and three other firms requested that the Corps extend the bid opening date. The Corps denied the requests. Bids were opened on July 11, 1979. Two bids were received. The low bid was \$348,000 or 17 percent above the Government estimate.

E&I subsequently protested to our Office that it did not have adequate time to prepare its bid. The Corps does not intend to award a contract during the pendency of E&I's protest.

The Corps recommends that E&I's protest be denied. The Corps points out that August 11, 1979, was a Saturday, and E&I as an experienced bidder should have known that the Corps never opens bids on Saturday. Moreover, the August 11, 1979, bid opening date was not marked with an asterisk, indicating a change to the IFB. Also, the Corps, citing prior decisions of our Office, contends that all bidders were treated equally; there was no intent to preclude E&I from bidding; the risk of non-receipt or late receipt of an amendment is on the bidder; two firms in the same locale as E&I submitted responsive bids, which indicates that bidders had sufficient time to prepare their bids; and adequate competition and a reasonable price were obtained.

E&I, on the other hand, asserts that it did not notice the lack of an asterisk or that August 11, 1979, fell on a Saturday. At any rate, the construction industry works on Saturdays; there is nothing irregular about a Saturday bid opening date. Also, four bidders were precluded from bidding because of Government error. The protester reasserts the fact that amendment number 2 was received on July 9, 1979.

The record is unclear on whether adequate time was available for E&I to prepare a bid. The date of the protester's receipt of amendment number 2 has not been firmly established. Also, there is no evidence of record as to when the two responsive bidders received the Corps' corrective telegram.

The Corps' position that a prudent bidder should have suspected that August 11, 1979, was not the bid opening date is borne out by the fact that several

bidders suspected a mistake and contacted the Corps concerning the date set for bid opening after receiving amendment number 1. When the mistake was brought to the Corps' attention, the Corps immediately dispatched telegrams to all prospective bidders. The telegrams called bidders' attention to the mistake and reestablished July 11, 1979, as the bid opening date. We think that the Corps' corrective action and the subsequent refusal to extend opening were reasonable since only four of 34 potential bidders requested that the bid opening date be extended.

Even assuming that E&I had insufficient bid preparation time due to Government error, the rules applicable to this type of case support the Corps' position. In CompuServe, B-192905, January 30, 1979, 79-1 CPD 63, we sustained the contracting officer's refusal to extend the closing date, citing 52 Comp. Gen. 281 (1972), 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. \* \* \*

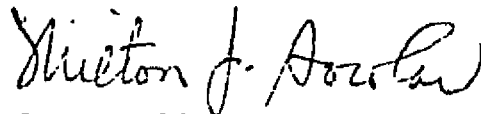
"We have also held that the propriety of a particular procurement must be determined from the Government's point of view upon the basis of whether adequate competition and reasonable prices were obtained, not upon whether every possible prospective bidder was afforded an opportunity to bid. B-147515, 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)."

The same rules apply where prospective bidders are precluded from competing for awards because of the failure to receive a material amendment or even the solicitation. See Kennedy Van and Storage Company, Inc., B-189220, August 19, 1977, 77-2 CPD 130; Check Mate Industries, Inc., B-194612, June 12, 1979, 79-1 CPD 172.

Based on the record before us, it appears that all bidders were treated fairly and equally and adequate competition (two bids) and a reasonable price were obtained. Therefore, we cannot object to the contracting officer's refusal to delay bid opening.

The protest is denied.



For The Comptroller General  
of the United States