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DECISION



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

FILE: B-212039

DATE: August 15, 1983

MATTER OF: Call-A-Messenger

DIGEST:

Where the agency does not receive an acknowledgment of a material amendment to the solicitation, the fact that the bidder sent the acknowledgment is not relevant as the bidder has the responsibility to assure that the acknowledgment arrives on time at the agency. Failure of the agency to receive the acknowledgment requires the rejection of the bid as nonresponsive.

Call-A-Messenger protests the rejection of its bid as nonresponsive for failure to acknowledge an amendment to invitation for bids (IFB) No. 1086-380028, issued on April 1, 1983 by the Department of State. For the reasons set forth below, we deny the protest.

The subject IFB, a total small business set-aside, solicited bids for shuttle bus service. Prior to the scheduled bid opening date of April 25, the State Department issued an amendment changing the specifications by requiring that the vehicle be air conditioned or heated as dictated by the season. The amendment also required the contractor to provide a vehicle in first-class operating condition, competent licensed drivers, and all fuel, lubricants and necessary operating supplies and maintenance.

Call-A-Messenger submitted the low bid, but the bid was viewed as nonresponsive because the agency had not received the bidder's acknowledgment of the amendment. The protester contends that it confirmed receipt of the amendment by mailgram and has furnished us a copy of a mailgram dated April 22, 1983.

Generally, the failure to acknowledge receipt of an amendment to a solicitation which materially affects the

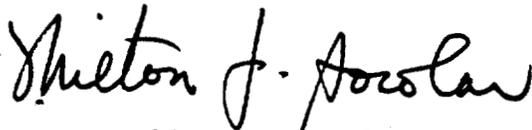
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solicitation requires rejection of the bid as nonresponsive. El Greco Painting and General Contractors Company, Inc., B-208215.2, November 30, 1982, 82-2 CPD 492. The basis for this rule is that acceptance of a bid which disregards a material provision of an invitation, as amended, would be prejudicial to other bidders. Clarification of the bid after bid opening would permit the bidder to become eligible for award by furnishing extraneous evidence that the amendment had been considered, or to avoid award by remaining silent. Fil-Coil Company, Inc., B-197604, March 25, 1980, 80-1 CPD 221.

The amendment was material as it set forth significant new requirements not included in the original solicitation. Call-A-Messenger could not be bound to meet these new requirements unless it acknowledged the amendment. The contracting agency, however, never received any acknowledgment. Although it appears that an acknowledgment was sent, the bidder has the responsibility to assure that its acknowledgment arrives on time at the procuring agency. United States Cartridge Company, 60 Comp. Gen. 251 (1981), 81-1 CPD 94. Here, for whatever reason, the agency did not receive the acknowledgment.

Under the circumstances, Call-A-Messenger's bid was properly rejected as nonresponsive.

We deny the protest.

for 
Comptroller General
of the United States