

DECISION

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

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FILE: B-212534**DATE:** November 29, 1983**MATTER OF:** Leach Company**DIGEST:**

Where several bidders relied on extended bid opening date in not submitting bids and two bids were erroneously opened on original opening date and prices disclosed, decision of contracting officer to continue procurements and not award on the basis of the prematurely opened bids was proper.

Leach Company protests award of a contract to any other bidder under invitation for bids (IFB) No. DAAE07-83-B-H627, issued by the United States Army Tank-Automotive Command (TACOM), for refuse collection trucks, containers and data.

We deny the protest.

Bid opening was originally scheduled for June 29, 1983. On June 27, 1983, the Army issued amendment 0006, which made certain engineering changes to the specifications and postponed the bid opening date to July 14, 1983. Advance copies of amendment 0006 were hand-delivered to the bid opening office on June 23, and the Army states that all potential bidders were notified of the bid extension and changes prior to June 29.

Leach, however, had mailed its bid prior to becoming aware of the postponed opening date. Due to an error on the part of TACOM personnel, the bids of Leach and Lodal, Inc. (Lodal), were opened prematurely on June 29. Two additional amendments (0007 and 0008) were issued, one of which made further specification changes. Leach and Lodal were afforded the opportunity to respond to amendments 0006, 0007, and 0008. Lodal acknowledged the amendments and changed its prices, but Leach did neither. Four other bids were received on the extended opening date.

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Leach argues that the Army should award the contract based upon the two bids that were prematurely opened because Lodal and other bidders underbid Leach's low bid disclosed prices to its prejudice.

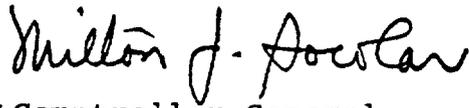
The Army acknowledges that the premature opening of Leach's bid was improper and indicates that distribution procedures have been changed to prevent the recurrence of this situation. However, on the basis of the factual circumstances and the available alternatives, the Army contends that it mitigated any prejudice that might have been suffered by Leach by permitting Leach to confirm or revise its prematurely opened bid. The Army states that it did consider awarding the contract based upon the bids that were prematurely opened. However, because amendments 0006 and 0007 also made significant changes to the specifications, the Army indicates that award based on the original IFB would not meet its requirements. Further, the Army states that award based solely on the prematurely opened bids would be prejudicial to the bidders that had relied on the bid opening extension date to submit a bid. Accordingly, the Army decided to proceed with the procurement and consider the bids of Leach and Lodal with those opened at the official bid opening date.

While the Army's action in opening Leach's bid prior to the official bid opening date was improper, we find no legal basis for requiring the Army to award the contract based upon the bids that were prematurely opened. In our view, the Army's decision to continue with the procurement has the same effect as if the contracting officer had decided to cancel the IFB because of the premature bid opening and resolicit, since, in both cases, the protester is arguing that award should be made solely on the basis of the prematurely opened bids. In these circumstances, we have held that consideration must be given both to the best interests of the government and to whether all bidders have been treated fairly and equally. Quaker Business Associates, Inc., B-187207, November 17, 1976, 76-2 CPD 430.

Leach has not shown that the decision to continue the procurement was unreasonable. It is apparent from the record that several bidders relied on the Army's decision to extend the bid opening date and had not submitted bids based on that fact. The formal advertising procedures contemplate full and free competition, which would not be

satisfied where several bidders which obviously intended to bid are denied the opportunity to do so. Award based on the prematurely opened bids would discriminate unfairly against those bidders which justifiably relied on the postponed bid opening date in not submitting bids. Quaker Business Associates, Inc., supra.

Consequently, we find that the Army's decision to proceed with the procurement will best protect the integrity of the competitive bidding system and that the Army's actions minimized the prejudice Leach may have suffered as a result of the premature bid opening. Accordingly, the protest is denied.

for 
Comptroller General
of the United States