

DECISION

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

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FILE: B-212750**DATE:** January 17, 1984**MATTER OF:** Tom Walsh & Associates**DIGEST:**

Where an invitation for bids was amended to reinstate a previous description of the required dimensions of the solicited product, thus allowing protester again to contemplate bidding; the amendment was easily understood; the place for receipt of bids was approximately 15-20 miles from protester's office; five other bidders acknowledged the amendment; no other firm complained of insufficient time in which to consider the amendment; and the protester itself submitted a bid, then a protest that issuing the amendment 10 days before bid opening allowed the protester insufficient time to consider the amendment is denied.

Tom Walsh & Associates protests the award of a contract under invitation for bids No. 1347, issued by the United States Geological Survey (USGS), Department of the Interior, for the provision of a forklift truck and the provision and installation of pallet storage racks at USGS's new Marine Facility Warehouse in Redwood City, California. Walsh alleges that it was allowed insufficient time to consider an amendment to the IFB and as a result made a mistake in its bid that deprived it of the award. We deny the protest.

As issued on June 17, 1983, the IFB specified that the pallet storage racks were to be able to house pallets with "dimensions of 40" x 48" x 6" (+ 1/2")" and set July 15 as the bid opening date. Walsh, believing that few contracting officials were aware that it was common industry practice to state the length of the stringer (i.e., the longitudinal member of the pallet) first when specifying

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the dimensions of a pallet, called USGS to verify the dimensions stated in the IFB. In response to this and other questions and requests for clarification, on July 7 USGS issued amendment No. 1 erroneously providing that the length of the stringer was to be 48 inches. The amendment also deleted a small business set-aside restriction and USGS accordingly extended the bid opening date to 3:00 p.m. August 1 in order to allow it sufficient time in which to resynthesize the procurement in the Commerce Business Daily.

However, in response to further requests for clarification, on July 22 USGS issued amendment No. 2 by which it informed bidders that the pallet stringer length was to be 40 inches instead of 48 inches. USGS decided not to extend the August 1 bid opening date, determining that (1) it needed to make award as soon as possible so that it could commence moving into the new warehouse by September 5 and thereby avoid substantial additional costs and disruption to its scientific mission; (2) the changes made by amendment No. 2 were insubstantial; and (3) issuance of the amendment 10 days prior to the bid opening date allowed an adequate period for consideration of the amendment.

Walsh informs us that upon receipt of amendment No. 1, it decided not to submit a bid since the side reach forklift truck that it had intended to offer would not work a 48 inch pallet stringer in the 64 inch warehouse aisles specified in the IFB. Walsh states that after amendment No. 2 was issued it again believed that it could offer its side reach forklift truck. However, since it did not receive a copy of amendment No. 2 until July 26, Walsh telephoned USGS and "registered . . . concern and complaint over having such a short time" in which to prepare its bid and requested an extension of the bid opening date.¹ Although USGS denied this request, Walsh nevertheless submitted a bid.

¹Walsh therefore made a timely protest to the agency. See Amray, Inc., B-208308, January 17, 1983, 83-1 CPD 43.

USGS received six bids in response to the IFB, including the apparent low bid of \$80,778 from Integrated Handling Systems, the apparent second low bid of \$83,267 from Walsh, and four other bids ranging from \$87,330 to \$97,021. Shortly after bid opening, Walsh informed USGS that it had made a mistake in its bid and accordingly requested correction to a figure that would have displaced the apparent low bid. USGS denied Walsh's request for correction on the ground that the existence of the mistake and the bid actually intended were not ascertainable substantially from the IFB and the bid itself, as required by the Federal Procurement Regulations (FPR) § 1-2.406-3(a)(3) (amend. 165, June 1976) when a correction would displace the low bid. Walsh thereupon filed a written protest with the agency incorporating the substance of its earlier oral protest. Upon USGS's written denial of the protest Walsh filed this protest with our Office. Citing the urgency of its need, USGS subsequently made award to Integrated Handling notwithstanding this protest.

Walsh alleges that USGS's refusal to extend the August 1 bid opening date after issuing amendment No. 2 denied Walsh sufficient time to adequately consider the amendment and prepare its bid, with the result that Walsh's staff was unable to make its normal check of the worksheets used to prepare Walsh's bid and a major mathematical error was accordingly overlooked. Walsh therefore requests that the procurement be resolicited.

FPR § 1-2.207(d) (amend. 139, January 1975) provides that:

"(d) 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, if such information is necessary to 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."

In determining whether contracting officials acted reasonably and allowed bidders sufficient time to consider an amendment even though the officials may have refused to extend the bid opening date or extended it less than alleged to have been necessary, we have considered a number of factors. These include:

(1) the length of time allowed for consideration of the amendment and submission of a bid, see Infinity Corporation, B-202508.3, July 17, 1981, 81-2 CPD 45 (issuance of amendment 14 days before bid opening date reasonable); Sound Refining Inc., B-193863, May 3, 1979, 79-1 CPD 308 (issuance of amendment 7 days, and receipt of copy of amendment 4 days, before bid opening date reasonable); Pacific Contractors, Inc., B-190568, October 24, 1978, 78-2 CPD 297 (issuance of amendment 1 day before bid opening date reasonable); Starline, Incorporated, 55 Comp. Gen. 1160 (1976), 76-1 CPD 365 (1 day reasonable); Royal Services, Inc., 50 Comp. Gen. 649 (1971) (5 days reasonable); 45 Comp. Gen. 651 (1966) (2 days unreasonable); see also 41 C.F.R. § 5B-2.207 (1982) (amendments regarding questions raised by prospective bidders shall not be issued later than 10 days before receipt of bids in the procurement by General Services Administration of leases of space and nonpersonal services);

(2) the proximity of bidders to the procuring activity, see Pacific Contractors, Inc., supra (local firms); see also 45 Comp. Gen. 651, supra (place for receipt of bids was "far removed from the issuing office");

(3) the significance and complexity of the amendment, see Versatile Services, Inc.;

Palmetto Enterprises, Inc., B-192819, February 26, 1979, 79-1 CPD 131; Pacific Contractors, Inc., supra (simple amendment); Starline, Incorporated, supra (simple and precise amendment);

(4) the degree to which any requirement imposed by the amendment was a surprise to the protester, see Starline, Incorporated, supra (amendment maintained requirement of which protester already was aware);

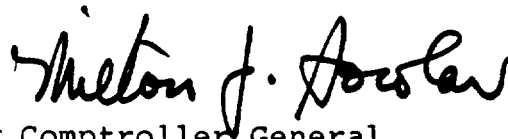
(5) whether the protester had requested an extension prior to closing date, see Infinity Corporation, supra; Sound Refining Inc., supra; Pacific Contractors Inc., supra; and

(6) whether other bidders submitted late bids or complained of insufficient time in which to consider the amendment, see Sound Refining Inc., supra; Pacific Contractors, Inc., supra; Royal Services, Inc., supra; but see 45 Comp. Gen. 651, supra (it is not considered significant that some of the bidders had substantial time to acknowledge the amendments since the FPR requires that "all" prospective bidders have sufficient time to consider amendments).

Here, amendment No. 2 was issued 10 days before the bid opening date and Walsh received its copy of the amendment 6 days before the bid opening date. Although the amendment may have been of great significance to Walsh, allowing the firm to bid a side reach forklift, the change in stringer length was a simple, easily understood change. Nor were the requirements imposed and the opportunities offered by this change unknown to Walsh in the context of this procurement, since Walsh apparently had contemplated during the period between the issuance of the IFB on June 17 and the issuance of amendment No. 1 on July 7 the possibility that, consistent with industry custom, the 40" x 48" dimensions specified in the IFB indeed meant a stringer length of 40 inches and that accordingly Walsh

could offer a side reach forklift. Once Walsh had prepared its bid, it did not have far to go in order to deliver it, since the USGS issuing office and the location to which bids were to be returned were in Menlo Park, California, while Walsh's office, as listed in its bid, was in Milpitas, California, approximately 15-20 miles away. Although Walsh requested a time extension before the closing date, Walsh was able to submit its bid, all of the other five bidders acknowledged the amendment, and none of the other actual or potential bidders has complained of insufficient time in which to consider amendment No. 2. Further, we note that mistakes by bidders in the preparation of their bids are not uncommon even when the bidders do not appear to be under any unusual time pressure, and we agree with USGS that it is purely conjectural to attribute Walsh's mistake here to the length of time Walsh had in which to prepare its bid. Therefore, under these circumstances, we conclude that Walsh has failed to demonstrate that USGS did not provide sufficient time for prospective bidders to consider amendment No. 2 in that USGS's refusal to extend the bid opening date after issuing amendment No. 2 was unreasonable.

The protest is denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States