

*Spangenberg*

**DECISION**



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

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**FILE:** B-218079 **DATE:** February 6, 1985

**MATTER OF:** Triple A Shipyards

**DIGEST:**

Bidder's failure to acknowledge material amendments not mailed to it because of the agency's clerical error renders the bid nonresponsive, and award may be made under IFB where there was adequate competition and reasonable prices and where bidder does not allege that there was a deliberate attempt to exclude it from competition.

Triple A Shipyards protests any award under invitation for bids No. N62383-85-B-0012, issued by the Military Sealift Command, Oakland, California. Triple A asserts that it failed to receive and therefore failed to acknowledge two amendments to the IFB. Triple A contends that since the agency has indicated that Triple A was not mailed copies of the amendments because of clerical error, no award should be made under the IFB. Triple A further states that these amendments deleted certain items, added certain items, and made other changes. Triple A does not indicate whether it is the low bidder or if the Military Sealift Command proposes to reject its bid.

We dismiss the protest.

If amendments are material, then failure to acknowledge their receipt renders a bid nonresponsive and ineligible for award. Southeast Engineering, B-215855, Sept. 11, 1984, 84-2 CPD ¶ 283; Mar-Mac Precision Corp., B-214604, Aug. 13, 1984, 84-2 CPD ¶ 164. Our Office has held that the bidder bears the risk of nonreceipt of solicitation amendments absent a deliberate attempt to exclude it from the competition. Id. In addition, the adequacy of competition and reasonableness of prices must be considered in determining the propriety of a particular procurement. Id.

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Here, it appears that the amendments changed the scope of work and were therefore material. Triple A states that other bids acknowledging the amendments were received at bid opening and that the agency solicited and mailed amendments to 11 potential sources. From this, we infer that competition was sufficient to ensure reasonable prices. Also, Triple A does not allege there was any deliberate attempt to exclude it from the competition.

Under these circumstances we feel that Triple A does not present a valid basis for protest. See GAO Bid Protest Regulations, § 21.3(f), 49 Fed. Reg. 49,417, 49,421 (1984). Therefore, the protest is dismissed.

*Ronald Berger*  
For Comptroller General  
of the United States