



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Mallory Electric Company

**File:** B-234494

**Date:** May 5, 1989

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### DIGEST

Bidder's acknowledgments of solicitation amendments received by contracting officer prior to bid opening may be accepted as timely by agency despite contracting officer's inadvertent failure to bring the acknowledgments to the bid opening room or to announce the acknowledgments at bid opening.

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### DECISION

Mallory Electric Company protests the award of a contract to J.G. Salas & Sons, Inc., under invitation for bids (IFB) No. N62477-88-B-0081, issued by the Department of the Navy for the upgrade of the switch station at the Naval Surface Warfare Center Detachment, Wallops Island, Virginia. Mallory contends that Salas, the apparent low bidder, failed to timely acknowledge two amendments to the IFB.

We deny the protest.

The IFB was issued December 29, 1988, and was amended two times. Amendment 1 substituted a wage decision for one which the agency states had expired. Amendment 2, which extended bid opening to February 7, 1989, changed specifications and added an additional work requirement. The IFB provided that bidders could acknowledge receipt of amendments to the IFB by completing the amendment and returning one copy, by acknowledging receipt of the amendment on each copy of the offer submitted, or by separate letter or telegram.

The Navy states that Salas mailed the completed amendments to the agency by certified mail on February 1 and that the acknowledgments of the amendments were received by the contracting activity's mailroom on February 3. The agency has provided our Office with a copy of the original receipt for certified mail, addressed to the contracting activity

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and postmarked February 1, 1989. It also has submitted the return receipt which was signed by an agency representative and dated February 3. The agency has also submitted an affidavit of the contract specialist responsible for this procurement stating that on February 6, 1989, the day before bid opening, he found on his desk amendments 1 and 2 to the solicitation, which had been completed and returned by Salas. The affidavit states further that he received a telephone call on February 6 from an employee of Salas inquiring whether the agency had, in fact, received the amendments which Salas had sent back. The contract specialist states that he informed the employee that he had received the amendments.<sup>1/</sup> Finally, he explains in the affidavit that he did not record or announce the acknowledgments of the amendments from Salas at bid opening because he had completely forgotten about them and did not bring them to the bid opening room.

Mallory does not dispute the accuracy of the agency's evidence, but argues that the copies of the certified mail receipts are insufficient to show that the amendments were timely mailed and received and that the contracting agency has not provided a time/date stamp indicating receipt at the installation.

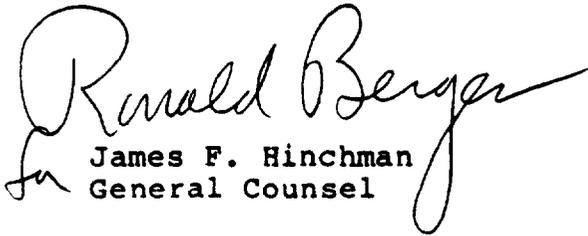
We think that the record clearly demonstrates that the acknowledgments were timely received by the agency and thus were properly acknowledged by Salas. The fact that the contract specialist inadvertently failed to bring the amendments to the bid opening room does not, in our view, affect the validity of the bid, since the agency, in fact, timely received the amendments prior to bid opening. To the extent that Mallory contends that the amendments were not received by the Navy prior to bid opening, we note that Salas sent its acknowledgments by certified mail 6 days before the date specified for receipt for bids. Consequently, even assuming the amendments arrived at the contracting activity late, the agency could properly have

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<sup>1/</sup> The agency has submitted an "oral or telephone conversation record" dated February 6, which documents this telephone conversation.

accepted them. Federal Acquisition Regulation § 14.304-1(a)(1) (FAC 84-11); Age-King Industries, Inc., B-214330, June 5, 1984, 84-1 CPD ¶ 596.

The protest is denied.

  
James F. Hinchman  
General Counsel