



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

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B-179119

October 1, 1973

Cyrus G. Delano Company  
2910 W. College Avenue  
Denver, Colorado 80219

Attention: Cyrus G. Delano

Gentlemen:

We refer to your letter of July 5, 1973, protesting the award of a contract to another bidder under Invitation for Bids (IFB) No. 292-73-37, issued May 18, 1973, by the Atomic Energy Commission (AEC), Rocky Flats Area Office, Golden, Colorado, for a steam plant addition at the Plutonium Recovery and Waste Treatment Facility.

Essentially, you contend that your firm should not be penalized for your failure to properly acknowledge amendments to the invitation since you attempted to obtain the necessary information from AEC.

The IFB initially was scheduled for bid opening on June 21, 1973. Pursuant to your request a copy of the plans and specifications was mailed to you on June 4, 1973. Two amendments to the IFB were issued on June 18 and 25, respectively. The first amendment extended the bid opening date to June 28 and made a number of other changes, the more significant of which were the modifications to the Davis-Bacon wage rates, a number of changes in the technical provisions and the addition of a number of special conditions. The second amendment changed three of the special provisions and one technical provision, and added a new special condition on the General Manager's Determination - Project Labor Agreement.

Your protest states that neither amendment was received by your firm but that you "had heard that an addendum was out." You contend that on June 26 you unsuccessfully tried to contact AEC to obtain the necessary information and that you finally reached an AEC representative by telephone

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on June 27. This individual read, while you transcribed, what you believed to be a portion of amendment No. 1. You state that it was your belief at the time that this amendment was the only one issued. As it turns out, amendment No. 2 was read to you with the exception of Special Condition 31 and the related voluminous document entitled "General Manager's Determination - Project Labor Agreement." You have submitted your transcribed notes in support of your statement.

Three bids were opened on June 28, and your firm was low. However, your bid acknowledged only the receipt of amendment No. 1 but referred to it as bearing a date of June 25, which is the date of the second amendment. As a result your bid was rejected as nonresponsive and award was made to the second low bidder on June 29, 1973.

Generally, if a bidder does not receive and acknowledge a material amendment to an invitation and such failure is not the result of a conscious or deliberate effort to exclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. 40 Comp. Gen. 126, 128 (1960). Since we are advised by the AEC that copies of both amendments were mailed to you on the dates of issuance, we have no reason to believe that the failure of your firm to receive these amendments was the result of a deliberate effort on the part of the contracting agency.

The procurement regulations provide that the failure of a bidder to acknowledge receipt of an amendment may be considered a minor irregularity, which may be corrected or waived after bid opening, if the bid, as received, clearly indicates that the bidder received the amendment or if the amendment involves only a matter of form or is one which has either no effect or a trivial effect on price, quantity, quality or delivery of the required item. See Federal Procurement Regulations 1-2.405(d).

In this connection AEC has advised that both amendments incorporate changes which are material, thereby requiring a clear acknowledgment for both prior to bid opening. We do not think your acknowledgment of amendment No. 1 with the inclusion of the date of the second

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amendment is a sufficiently clear indication of receipt of both amendments. We think your bid, on its face, indicates an awareness of only one amendment and that you could not be held to perform in accordance with all material requirements of the invitation, as amended, without some further manifestation on your part of your concurrence.

While we question whether the issuance of a material and voluminous bid amendment only three days prior to bid opening permitted sufficient time for its receipt, evaluation and acknowledgment we are not inclined to disturb the award since the record shows that you chose to submit a bid without reviewing all bidding documents. In this connection, we have noted your statement that the AEC representative, on the day prior to bid opening, indicated that your bid would not be affected by Special Condition 31 and the related General Manager's Determination, Project Labor Agreement, which provisions were not read to you over the telephone because of their great length. However, we think bidders should be on notice of the possibility that the views of a Government representative regarding the materiality of an amendment, might not be sustained by other authority. See 52 Comp. Gen. \_\_\_\_\_ (B-177716, May 3, 1973). We believe you should have requested prior to bid opening an opportunity to review all bidding documents and that any protest on that account should have been filed prior to bid opening. 4 CFR 20.2(a).

Accordingly we conclude that the rejection of your bid was proper and your protest is therefore denied.

Enclosed is a copy of our letter of today to the agency pointing out the need to allow potential bidders a sufficient time prior to the opening of bids to consider bid amendments.

Sincerely yours,

Paul G. Dabbling

Acting Comptroller General  
of the United States

Enclosure



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

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B-179119 (2)

October 1, 1973

The Honorable Dixy Lee Ray  
Chairman, United States Atomic  
Energy Commission

Dear Dr. Ray:

We refer to letter dated August 9, 1973, from the Director, Division of Contracts, furnishing a report on the protest of the Cyrus C. Delano Company, against rejection of its bid under solicitation No. 292-73-37.

There is enclosed for your information a copy of our decision of today to the company denying its protest.

Your attention is directed to that portion of our decision wherein we recognize the prejudicial effect which may be occasioned by the failure to allow sufficient time for receipt, evaluation and acknowledgment of a material invitation amendment such as occurred in this case. We suggest that appropriate action be taken to preclude a recurrence.

The file transmitted with the report of August 9 is returned.

Sincerely yours,

Paul S. Dardling

Acting Comptroller General  
of the United States

Enclosures