

DECISION



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

60087

FILE: B-184418

DATE: October 28, 1975

MATTER OF: Shah Construction Company

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97789

DIGEST:

1. Failure to acknowledge amendment to IFB substituting latest Davis-Bacon wage determination which affected employees performing work under the contract renders bid nonresponsive since it is not a minor informality or irregularity that may be waived.
2. Inadvertent misdirection of solicitation amendment does not require cancellation since procurement activity is not insurer of prompt delivery. The propriety of procurement rests not on affording every prospective bidder an opportunity to bid but on obtaining adequate competition and reasonable prices.

Shah Construction Company (Shah) protests the award to J. W. Praught Company under invitation for bids (IFB) No. N62472-75-B-0084, issued by the Northern Division, Naval Facilities Engineering Command. The IFB called for the relocation of the Naval Blood Research Laboratory, U.S. Naval Hospital, Chelsea, Massachusetts.

On May 30, 1975, amendment 0001 was issued which increased the amount of liquidated damages and substituted a new wage decision of the Department of Labor applicable to this construction work. The new wage determination increased the minimum fringe benefits that the contractor would be required to pay to some of the employees performing work under the contract. The bid of Shah was low but was rejected as nonresponsive since it failed to acknowledge receipt of amendment 0001 or otherwise indicate that the bid included the amendment. Shah alleges that since it did not receive the amendment its bid should not be rejected.

The record indicates that the amendment was mailed to Shah Construction Company, Salem Lincoln Street, Wakefield, Massachusetts. The correct address is 7 Lincoln Street, Wakefield, Massachusetts. Shah's address was incorrectly recorded on the bidder's list due to a misunderstanding of the address telephonically communicated by Shah.

We have consistently held that the failure of a bidder to acknowledge an amendment to the IFB which incorporates the latest Davis-Bacon wage determination affecting employees performing work under the contract is material and not subject to waiver as a minor informality or irregularity. See 51 Comp. Gen. 500 (1972); Hartwick Construction Corporation, B-182841, February 27, 1975, 75-1 CPD 118; and the decisions cited therein.

The fact that the amendment may have been mailed to an incorrect address and never received by Shah is not a sufficient basis for canceling the solicitation. ASPR 2-208(a) (1974 ed.) provides:

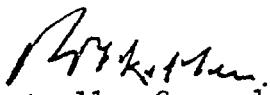
"If after issuance of an invitation for bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedule, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids using Standard Form 30 (see 16-101), whether or not a pre-bid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room."

Although the above subparagraph requires that amendments be sent to everyone to whom invitations have been furnished, such provisions do not make the procurement activity an insurer of the prompt delivery of amendments to each prospective bidder. 52 Comp. Gen. 281, 283 (1972). The risk of a fortuitous loss or delay of a particular individual's copy of an amendment is upon the bidders. See 52 Comp. Gen. 281, supra, and decisions cited therein. The statement of this Office in 52 Comp. Gen. 281, 283, supra, is equally as applicable to the present case:

"* * * While it is unfortunate that your address was not correctly recorded on the bidder's list, we do not find anything in the record to indicate that the error was other than an inadvertent mistake, or that it was occasioned by any deliberate attempt on the part of the procuring personnel to exclude you from participating in the procurement. In such circumstances, although we recognize the resulting hardship which may be experienced by your firm, it has been our consistent position that the nonreceipt or delay in receiving bidding documents by a prospective bidder does not require cancellation or amendment of the invitation. 34 Comp. Gen. 684 (1955)."

The propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained, not upon whether each individual bidder was given an opportunity to bid. See 52 Comp. Gen. 281, 283, supra. While the Government should make every reasonable effort to insure that amendments are timely received by everyone to whom invitations have been furnished, the failure of a bidder in a particular case to receive an amendment does not warrant cancellation of the invitation for bids. This is particularly true where, as here, there is no indication that adequate competition and a fair price were not obtained. Cancellation of the invitation at this point would cause further delay and additional expense to the Government and to the bidders. See B-147515(3), January 12, 1962.

For the above stated reasons relief cannot be granted and your protest is therefore denied.


Deputy Comptroller General
of the United States