

DECISION



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

FILE: B-208437

DATE: August 17, 1982

MATTER OF: Rockford Acromatic Products Company

DIGEST:

Bidder's failure to acknowledge a material amendment to IFB renders the bid nonresponsive. The fact that the bidder never received the amendment is irrelevant unless the failure to receive resulted from a deliberate attempt by the contracting agency to exclude the firm from the competition.

Rockford Acromatic Products Company protests the rejection of its bid as nonresponsive under invitation for bids DAAE07-82-B-5360 issued by the Army for universal parts kits. The Army rejected the bid because Rockford did not acknowledge receipt of an amendment that substantially increased the quantity of kits solicited. Rockford complains that it never received the amendment.

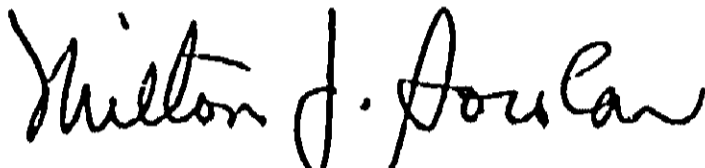
We deny the protest summarily.

A bidder's failure to acknowledge a material amendment to an invitation for bids generally renders the bid nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. The reason is that the Government's acceptance of the bid would not legally obligate the firm to meet the Government's needs as identified by the amended solicitation. See Jose Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97. In this respect, an amendment substantially increasing the number of items solicited clearly is material. See Defense Acquisition Regulation 5.2-405(iv)(B) (1976 ed.).

Moreover, the bidder bears the risk of nonreceipt of a solicitation amendment; the contracting agency discharges its legal responsibility when it issues and dispatches an amendment in sufficient time to permit all bidders to consider the amendment in formulating their bids. See Andero Construction Inc., B-203898,

February 16, 1982, 82-1 CPD 133. Thus, the fact that the bidder may not have received the amendment is not relevant unless the failure resulted from a conscious or deliberate effort by contracting officials to exclude the bidder from the competition, 3B Building Maintenance Co., B-205257, October 28, 1981, 81-2 CPD 364.

The protester does not suggest that it did not receive the amendment in issue because of a deliberate attempt to exclude the firm from consideration for award. Therefore, the protest is summarily denied.

for 
Comptroller General
of the United States