

DECISION

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

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FILE: B-212796**DATE:** September 13, 1983**MATTER OF:** Richard Delene Contracting, Inc.**DIGEST:**

A bidder's failure to acknowledge a material amendment renders its bid nonresponsive. The deficiency may not be waived on the basis that the bidder did not receive the amendment where there is no evidence of a deliberate effort by the agency to prevent the bidder from competing on the procurement.

Richard Delene Contracting, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. R9Z-83-52-0, issued by the Forest Service, U.S. Department of Agriculture, for culvert replacements and roadgrade revisions on certain forest roads. The Forest Service rejected Delene's low bid because it did not contain an acknowledgment of an amendment which, the contracting officer determined, was material because it would increase bid prices. We deny the protest summarily.

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive and thus unacceptable. See Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. Absent such an acknowledgment, the Government's acceptance of the bid would not legally obligate the bidder to meet the Government's needs as identified in the amended IFB. See Jose Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97. Although Delene argues that the amendment would have had no effect on its bid, we believe the amendment was material. It altered the agency's requirement, in part, by increasing by 104 cubic yards the amount of aggregate to be placed on one road. Delene could not be held legally bound to meet this increased requirement given its failure to acknowledge the amendment.

Delene argues that its failure to acknowledge the amendment should be waived because neither it nor three of the six other bidders ever received the amendment,

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suggesting "a serious lapse of procedure on the part of the Forest Service." The contracting agency is not an insurer of delivery of bid documents to prospective bidders. Rather, the risk of nonreceipt is on the bidders. See Gomez Electrical Contractors, Inc., B-208688, September 8, 1982, 82-2 CPD 214. Thus, where a bidder does not receive and acknowledge a material amendment and there is no evidence that this failure resulted from a conscious or deliberate effort by the agency to exclude the bidder from the competition, the bid must be rejected as nonresponsive. Id.

Here, although Delene claims four of the seven bidders did not receive the amendment, receipt of the amendment by three of the bidders indicates that it was transmitted by the agency. Even if Delene is correct that nonreceipt by four bidders evidences a "lapse of procedure," it is not evidence that the Forest Service acted deliberately to prevent Delene or any other firm from competing. Absent such evidence, we must conclude that Delene's failure to acknowledge the amendment, even though the company allegedly never received it, rendered its bid nonresponsive.

The protest is denied.

Milton J. Aroslan
for Comptroller General
of the United States