



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Shemya Constructors  
**File:** B-232928.2  
**Date:** February 2, 1989

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### DIGEST

1. Where protester seeks cancellation and resolicitation of a procurement based on failure to receive a material amendment to the invitation for bids (IFB), protester is an interested party to challenge award under the IFB despite the fact that it submitted a late bid since, if the protest is sustained, protester will have an opportunity to compete under the new IFB.
2. Where full and open competition and a reasonable price are obtained and the record does not show a deliberate attempt by the contracting agency to exclude the offeror from the competition, an offeror's nonreceipt of a solicitation amendment establishing a new bid opening date does not require cancellation and resolicitation of the procurement.

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### DECISION

Shemya Constructors protests the proposed award of a contract to Blaze Construction under invitation for bids (IFB) No. F65501-88-B-0043, issued by the Air Force for maintenance and repair of airfield pavement at Elmendorf Air Force Base, Alaska. Shemya requests cancellation and resolicitation of the procurement because it did not receive two material amendments to the IFB and thus was prevented from submitting a timely bid.

We deny the protest.

Initially, the Air Force claims that the protest should be dismissed because Shemya is not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1988). The Air Force states that even if its protest were upheld, Shemya would not be eligible for award because it submitted a late bid and is not the low bidder. We disagree. When a protester seeks resolicitation of a procurement, the protester is an interested party since, if it prevails, it

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will have an opportunity to compete under the new solicitation. Big State Enterprises, 64 Comp. Gen. 482 (1985), 85-1 CPD ¶ 459. Since there is no evidence that Shemya would not be able to bid on a resolicitation of this procurement, it is an interested party.

Bid opening for the IFB initially was set for August 2, 1988. By amendment No. 2, dated July 28, the contracting agency notified the bidders that bid opening was postponed indefinitely. For the next month Shemya states that on every Monday it checked the Alaska AGC Bulletin, which regularly lists pending federal agency construction procurements, for the new bid opening date. On September 19, Shemya checked the bulletin and discovered that bid opening for the IFB was to take place that afternoon. Shemya called the contracting agency to confirm this, and learned that the contracting agency had issued two amendments to the IFB, amendment No. 3, dated September 1, setting bid opening for September 16, and amendment No. 4, dated September 7, extending the bid opening date to September 19. Shemya claims to have never received either amendment. According to Shemya, out of a total of 31 contractors solicited, 7 contractors, including itself, did not receive amendment Nos. 3 and 4. Shemya contends that its failure to receive the amendments caused its bid to be submitted late, and shows that the Air Force failed to comply with its duty to achieve full and open competition.

Generally the risk of nonreceipt of a solicitation amendment rests with the offeror. Maryland Computer Services, Inc., B-216990, Feb. 12, 1985, 85-1 CPD ¶ 187. The propriety of a particular procurement is determined on the basis of whether full and open competition was achieved and reasonable prices were obtained, and whether the agency made a conscious and deliberate effort to exclude an offeror from competing for the contract. International Association of Fire Fighters, B-220757, Jan. 13, 1986, 86-1 CPD ¶ 31.

In this case, the contracting agency has submitted records showing that Shemya was on the mailing list for the IFB and amendments. Date stamps on the mailing list show that the Air Force prepared amendment Nos. 3 and 4 for all solicited contractors, including Shemya, on September 3 and September 8. According to the agency's procedures, mailing lists are not date-stamped until after the material to be sent is in the appropriate envelope and mailing labels are affixed, after which the envelopes are metered and deposited with the Postal Service.

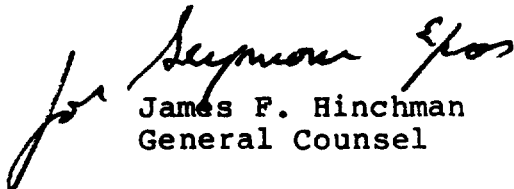
Shemya has presented no evidence, other than nonreceipt, that the Air Force failed in its duty to mail the amendments in a timely manner. Further, even excluding 7 of the 31

firms on the mailing list which did not receive amendment Nos. 3 and 4, the Air Force solicited 24 firms and received 2 bids. The record also shows that the Air Force obtained a reasonable price, since it awarded the contract to the low bidder whose price was 20 percent below the government estimate. In view of the number of firms solicited, the responses received and the award made, we think full and open competition was achieved.

The protester argues that our decision, Andero Construction Inc., B-203898, Feb. 16, 1982, 82-1 CPD ¶ 133, supports its position in this case. We disagree. In Andero, we held that cancellation of an IFB and resolicitation were required where the record did not establish that the contracting agency had made the required effort to achieve competition. Specifically, the agency failed to state affirmatively that the amendment at issue had been mailed to the protester; the agency had no routine business records showing the amendment had been sent; and three of the four bidders had not received the amendment. Here, in contrast, the agency maintains that the amendments were prepared and mailed in accordance with its usual procedures; the agency has produced the bidders' mailing list, a record maintained in the normal course of business, which supports the agency's position; and at least two bidders received the amendments.<sup>1/</sup>

Given that the record shows that the agency followed its standard procedures; there is no evidence of a conscious and deliberate effort on the agency's part to exclude Shemya from the competition; and award was made at a reasonable price after full and open competition, we see no basis to disturb the procurement.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>1/</sup> The protester's own survey of 28 firms on the mailing list shows that at least 1 other firm also received the amendments. In addition, while six of the firms included in its survey have stated that they did not receive the amendments, it is unclear how many, if any, of the remaining firms contacted also failed to receive them.