

144615 Lebowitz



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Adrian Supply Company

**File:** B-243904; B-243904.2

**Date:** August 7, 1991

Bob Stormberg for the protester.  
Millard F. Pippin, Department of the Air Force, for the agency.  
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Agency properly rejected as late protester's overseas bid modification and amendment acknowledgments which, while mailed to the APO address prior to bid opening, were not received at the government installation until 20 days after bid opening.
2. Protest against acceptability of awardee's bid is dismissed since protester, whose bid properly was rejected, lacks the direct economic interest necessary to qualify as an interested party because protester would not be in line for award even if its protest were sustained.

## DECISION

Adrian Supply Company protests the rejection of its bid as late and as nonresponsive under invitation for bids (IFB) No. F61040-90-B-0001, issued by the Department of the Air Force, Lajes Field, Azores, Portugal, for various types of transformers.

We deny the protest in part and dismiss it in part.

The solicitation, issued on November 2, 1990, contemplated the award of a firm, fixed-price contract for 15 line items. The solicitation required that bids be addressed to the Operational Contracting Division, 1605 MASW/LGC, APO New York 09406-5320, or if handcarried, delivered to the depository in Building T-615, Room 201, Lajes Field, Azores. Bid opening initially was scheduled for January 2, 1991, at 4 p.m., local time. A notice contained in the solicitation's cover sheet

specifically warned all bidders that mailing time from the United States to the Azores would take from 10 to 15 days. The solicitation contained the clause at Federal Acquisition Regulation (FAR) § 52.214-32, entitled "Late Submissions, Modifications, and Withdrawals of Bids (Overseas)," which stated that an overseas bid or bid modification received at the office designated in the solicitation after the exact time specified for receipt would not be considered unless it was received before award was made and was sent by mail, and it was determined by the government that the late receipt was due solely to mishandling by the government after receipt at the government installation.

On December 20, 1990, Adrian mailed its bid to the agency at the APO address given in the solicitation. Adrian's bid was received by the agency at Lajes Field, Azores on January 2, 1991. However, after Adrian mailed its bid, but prior to the scheduled bid opening, the agency twice amended the solicitation, making material changes to its requirements and ultimately extending bid opening until February 28.

On February 19, Adrian mailed its bid modification and amendment acknowledgments to the agency at the APO address given in the solicitation. The agency at Lajes Field, Azores, however, did not receive these documents until March 20, 20 days after bid opening. The agency rejected Adrian's bid, and the bids of three other firms, as nonresponsive for failure to acknowledge material amendments to the solicitation prior to bid opening. On April 26, the agency awarded a contract to Intertec Azores Lda., the low, responsive and responsible bidder. On May 6, Adrian filed this protest.

Adrian argues that it mailed its bid documents to the agency at the APO address given in the solicitation and that these documents were received at the APO address prior to bid opening on February 28. Adrian argues that the reason the agency at Lajes Field, Azores received these documents after bid opening was because of delays in overseas mail deliveries caused by Operation Desert Shield and Operation Desert Storm.

The phrase "bid opening office" refers to the ultimate destination of the bid, not to any intermediate stop in transit, such as a post office box. See Retsina Co., B-212471, Aug. 3, 1984, 84-2 CPD ¶ 148; LectroMagnetics, Inc., 56 Comp. Gen. 50 (1976), 76-2 CPD ¶ 371. Here, the ultimate destination for receipt of bids and the place of public bid opening on February 28 was the Operational Contracting Division's office in Building T-615, Room 201, Lajes Field,

Azores. Although Adrian's bid modification and amendment acknowledgments were received at the APO address prior to bid opening, the APO address, just as a post office box, was merely an intermediate stop in transit and was not the ultimate destination for receipt of bids or the place of public bid opening. Therefore, the agency properly rejected as late Adrian's bid modification and amendment acknowledgments.<sup>1/</sup>

Adrian next argues that the agency should have accepted its initial bid even without the acknowledgments of material<sup>2/</sup> solicitation amendments because this would have resulted in significant cost savings to the government.

A bid that does not include an acknowledgment of a material amendment must be rejected because absent such acknowledgment, the bidder is not obligated to comply with the terms of the amendment. See W.S. Jenks & Son, B-240865, Nov. 28, 1990, 90-2 CPD ¶ 440; Mar-Mac Precision Corp., B-214604, Aug. 13, 1984, 84-2 CPD ¶ 164. Thus, Adrian's bid was properly rejected as nonresponsive.

Finally, while in its comments to the agency's administrative report Adrian challenges the acceptability of Intertec's bid, Adrian lacks the direct economic interest necessary to qualify as an interested party eligible to protest the award to Intertec. Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.0(a)). The record shows that Adrian would not be in line for award even if its allegations concerning Intertec's bid were sustained. Rather, OHM

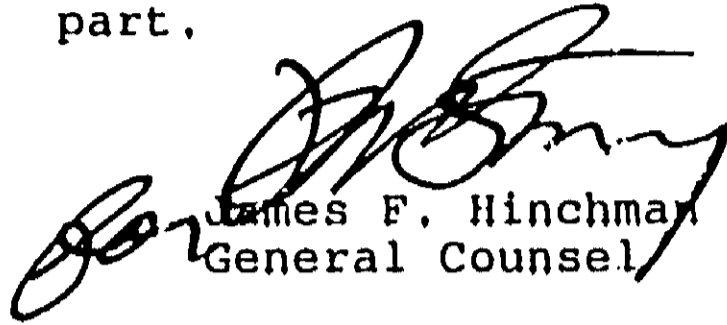
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<sup>1/</sup> While the agency acknowledges that overseas mail deliveries, including those to the Azores, were delayed because of Operation Desert Shield and Operation Desert Storm, we note that Adrian did not even allow the minimum 10-day mailing time as specified in the solicitation for mailing bid documents from the United States to the Azores. We therefore conclude that Adrian directly contributed to the delay in the agency's receipt of its bid modification and amendment acknowledgments prior to bid opening.

<sup>2/</sup> Adrian does not rebut the agency's position that the two amendments made material changes to the agency's requirements, including clarifying item descriptions, increasing quantities for certain line items, and requiring delivery of the items no more than 90 days after the date of the contract award.

International Corporation, the second low, responsive and responsible bidder, would be next in line for award. This protest ground is dismissed.

Accordingly, the protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel