

DECISION

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

*92. Request**Proc.**9014*

FILE: B-193626

DATE: February 1, 1979

MATTER OF: Commercial Lawn Maintenance, Inc.

[Protest of Maintenance Contract Award]
DIGEST: *DLG 00793*

1. Bidder's failure to acknowledge IFB amendment may not be waived on basis that bidder did not receive amendment from agency prior to bid opening where evidence does not indicate deliberate attempt by agency to exclude bidder from competition.
2. Failure to acknowledge amendment which increases scope of work materially (has more than trivial or negligible effect on price) renders bid nonresponsive.
3. Failure to follow regulation in making award during pendency of protest is procedural defect not affecting award and not prejudicial to protester who was properly found nonresponsive.

Commercial Lawn Maintenance, Inc. (Commercial), protests the award of a contract to any other firm under invitation for bids (IFB) No. N62477-78-C-8318, issued August 21, 1978, by the Naval Surface Weapons Center (NSWC) Silver Spring, Maryland. The IFB called for leaf collection, drainage cleaning and grounds and tree fertilization at the NSWC.

Four bids were received at the September 21, 1978, bid opening. Commercial's low bid of \$22,940 was rejected as nonresponsive for failure to acknowledge receipt of amendment No. 1 which increased the scope of work under the specifications. The Navy reports that its pre-bid estimate of the cost of the work added by amendment No. 1 was \$500. Although Commercial filed a protest with the agency prior to award, on November 14, 1978, an award was made to Gustin Gardens Tree Service, Inc., the low responsive bidder, in the amount of \$23,600

*003392**dic*

and Commercial was so advised and its protest denied by letter dated November 17, 1978.

Commercial filed a protest with our Office on December 5, 1978, contending that its failure to acknowledge the amendment should not render its bid nonresponsive since it never received the addendum which it contends should have been sent by telegram or mailgram. Commercial also contends that it was improper to make award while its protest was pending.

Concerning Commercial's failure to receive the amendment, generally, if a bidder does not receive and acknowledge a material amendment to an IFB and such failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2; Mike Cooke Reforestation, B-183549, July 2, 1975, 75-2 CPD 8. The contracting activity reports that all the firms which submitted bids, including Commercial, were furnished a copy of the amendment. It is further reported that three bidders acknowledged receipt of the amendment. We have no reason to believe that the failure of Commercial to receive the amendment was the result of a deliberate attempt on the part of the contracting activity to exclude Commercial from competition.

Our Office has held that failure to acknowledge an amendment to a solicitation which materially affects the IFB requires rejection of the bid as nonresponsive and may not be waived as a minor informality. See McKenzie Road Service, Inc., B-192327, October 31, 1978, 78-2 CPD 310. The subject amendment materially modified the work requirements since the increased scope of work, had more than a trivial or negligible effect on price, estimated to be \$500, where the difference in the two low bids was \$660.

Inasmuch as our Office is of the view that the bid of Commercial was properly rejected as nonresponsive, the apparent failure of the Navy to follow applicable regulation in making an award prior to resolution of its protest, which is a procedural defect not affecting the validity of an award, did

not result in any prejudice to Commercial. Dumont Oscilloscope Laboratories, Inc., B-190528, March 6, 1978, 78-1 CPD 172.

For the reasons stated, the protest is denied.


Deputy Comptroller General
of the United States