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Boyle



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

SEP 30 1981

OFFICE OF GENERAL COUNSEL

B-203013.2

Mr. Irving Zinger  
President  
Zinger Construction Company, Inc.  
17 Oceanview Avenue  
Valley Stream, New York 11581

Dear Mr. Zinger:

Your letter to Mr. Socolar dated September 18, 1981, has been referred to me for reply. Your letter presents comments concerning the last paragraph of our decision in the matter of Zinger Construction Company, Inc., B-203013, September 15, 1981, 81-2 CPD. The decision sustained Zinger's protest, concluding that the Army should revise its earthwork specifications to clarify when the Army will permit equitable adjustments under the Differing Site Conditions clause.

The last paragraph of the decision states that a recommendation for additional corrective action is not warranted for six specific reasons. Your letter comments on three of these reasons and you request that we respond to your comments.

First, the decision noted that, "contrary to the IFB's provisions, Zinger did not notify the contracting officer in writing about the problem with the specifications in sufficient time to permit clarification." In this regard, you question whether this presents an impossible standard to meet because potential bidders would have to review each solicitation at an early stage.

It is not practicable for our Office to establish a firm rule, applicable to all possible situations, concerning the number of days prior to bid opening that a bidder must seek clarification of specifications. Each procurement has unique circumstances of complexity and

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urgency, which do not permit such firm rules. As a practical matter, it is in the Government's best interests to have bidders review the solicitation as early as possible after it is released so that required clarification may be made without impeding the procurement schedule.


Second, the decision noted that "we have received no indication that the seven other bidders shared Zinger's concern \* \* \*." In this regard, you indicate that you do not know why these bidders were willing to bid without seeking clarification of the earthwork specifications.

We share your belief that the Government's specifications should be as clear as possible every time. One of the purposes of our September 15, 1981, decision was to call this matter to the Army's attention to achieve that end. We are, of course, in no better position than you are to speculate on the motivation of the other bidders. We simply noted that, in the circumstances, the Government obtained adequate competition and the other bidders were not prejudiced.

Third, you ask when a procurement is not under urgent conditions. Your question is too general to provide a meaningful answer. However, in the context of the September 15, 1981, decision, we state that "the award was made in good faith and under urgent circumstances because the low bid was about to expire and G & C would not agree to extend its bid acceptance period." The reason for the urgency was clearly set forth in the decision.

We trust that this will be responsive to your inquiry.

Sincerely yours,

  
Michael J. Boyle  
Senior Attorney