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WASHINGTON, D.C. 20548

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B-195323.2

November 9, 1979

The Honorable Claiborne Pell
United States Senate

Dear Senator Pell:

In your letter of October 3, 1979, you requested our comments on a letter of the same date from H. Alan Frank, President of Union Industries, Inc. (Union). Mr. Frank asks whether the Department of Agriculture has the right to reject Union's low bid for polyethylene bags because of Union's failure to acknowledge a solicitation amendment which it never received. Mr. Frank states the amendment was similar to one issued for the same requirement last year when the estimated quantity of one item in the solicitation was decreased by approximately 90 percent. He contends the change this year is meaningless because the agency has the option of ordering any quantity of bags under its requirements contract regardless of the estimate.

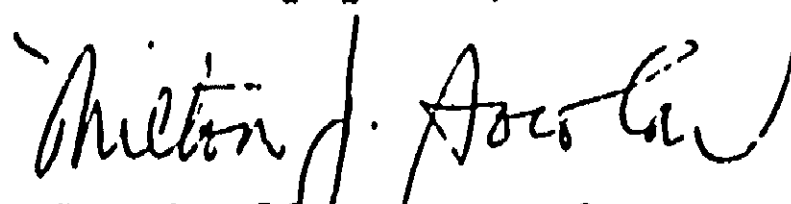
The general rule is that the procuring agency is not an insurer of delivery of bidding documents to prospective bidders. 52 Comp. Gen. 281 (1972). Thus, we have held that the bidder bears the risk of not receiving an amendment to the solicitation where the agency has complied with all regulations regarding timely mailing of the amendments. Empire Painting Company, Inc., B-190294, January 11, 1978, 78-1 CPD 23; General Aero Products Corporation, B-191870, July 25, 1978, 78-2 CPD 70.

Also, as a general rule, if a bidder fails to receive and acknowledge an amendment, the bid must be rejected as nonresponsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. The procuring agency may waive as a minor informality the failure of a bidder to acknowledge receipt of an amendment to a solicitation only when the bid received clearly indicates the bidder received the amendment or when the amendment involves a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon. Federal Procurement Regulations § 1-2.405.

Solicitations for requirements contracts usually contain estimates of quantities needed in order to permit bidders to determine their costs and prices which frequently vary considerably with the quantities produced. Although we recognize such estimates are inherently uncertain, we believe the bidders' reliance thereon is generally warranted. Therefore, if the amendment this year substantially reduced the estimated quantities, the contracting officer reasonably could have believed that a bidder's failure to acknowledge the amendment, even if it were not received, could not be waived. In any event, if Union wished to formally challenge the rejection of its bid, it should have filed a timely protest either with the contracting officer or with this Office. A copy of our booklet "Bid Protests at GAO" is enclosed for your information and for possible future use by Union.

We trust this information is responsive to your concerns.

Sincerely yours,



For The Comptroller General
of the United States

Enclosure