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P.L. II

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20348

04732

FILE: B-190294

DATE: January 11, 1978

MATTER OF: Empire Painting Company, Inc.

**DIGEST:**

Bidder bears risk of not receiving an amendment to the solicitation where agency has complied with all regulations regarding timely mailing and posting of the amendments.

Empire Painting Company, Inc. (Empire) protests the award of a contract under Schedule "A" of solicitation No. DACA85-77-B-0049 issued by the Alaska District, Army Corps of Engineers, for painting the interiors of family housing at Fort Richardson, Alaska. Empire's protest arises out of the fact that it did not receive Amendment R-4 to the solicitation which, inter alia, increased the work to be performed by adding two items to Schedule "A" at an estimated cost of \$31,160.00. Because Empire did not acknowledge the amendment, Empire's low bid for Schedule "A" of \$474,760.00 was found to be nonresponsive. Empire does not argue that Amendment R-4 had a trivial effect on price or quantity of the work to be performed. Rather, Empire urges that the solicitation should have been canceled and the requirement resolicited.

The solicitation was issued on August 18, 1977 with a bid opening date of September 21, 1977. Amendment R-1, issued on August 22, 1977, shortened the bid preparation period by one week and established a new bid opening date of September 14, 1977. Amendment R-3 was issued on September 14, 1977 subsequent to telephonic notification to all bidders on September 13, 1977 and telegraphic notification on September 14, 1977. That amendment established a new bid opening date of September 23, 1977. On September 15, 1977 the contracting officer issued Amendment R-4, the subject of this protest, but that amendment left the bid opening date at September 23, 1977.

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Regarding Empire's failure to receive notice of the work added by Amendment R-4, the Armed Services Procurement Regulation (ASPR) § 2.208(a) (1977) states that:

"If after the issuance of an invitation for bids, but before the time set for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids, using Standard Form 30 (See 10-101), whether or not a prebid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room."

In 52 Comp. Gen. 281 (1972) we analyzed the quoted provision as follows:

"While this subparagraph requires that the amendment be sent to everyone to whom invitations have been furnished, we have held that such provisions do not make the procurement activity an insurer of the prompt delivery of amendments to each prospective bidder. The procurement activity discharges its responsibility when it issues and dispatches an amendment in sufficient time to permit all the prospective bidders time to consider such information in submitting their bids, notwithstanding the fortuitous loss or delay of a particular individual's copy of the amendment. The risk of non-receipt of invitations and amendments thereto is upon the bidders. While the Government should make reasonable efforts to see that interested bidders receive timely copies of the invitation for bids and amendments thereto, the fact that there was a delay in a particular case, where the provisions of ASPR 2-208 have been complied with does not warrant the acceptance of a bid or a modification

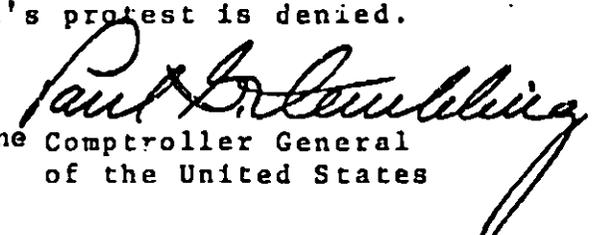
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thereof after the time fixed for opening, nor does it require the resolicitation of the procurement. 40 Comp. Gen. 128 (1960); B-175409, April 14, 1972; B-174259, January 5, 1972; B-174230, November 17, 1971; B-167921, December 1, 1969.

"We have also held that the propriety of a particular procurement must be determined from the Government's point of view upon the basis of whether adequate competition and reasonable prices were obtained, not upon whether every possible prospective bidder was afforded an opportunity to bid. B-147515, January 12, 1962. While it is unfortunate that your address was not correctly recorded on the bidders list, we do not find anything in the record to indicate that the error was other than an inadvertent mistake, or that it was occasioned by any deliberate attempt on the part of the procuring personnel to exclude you from participating in the procurement. In such circumstances, although we recognize the resulting hardship which may be experienced by your firm, it has been our consistent position that the nonreceipt or delay in receiving bidding documents by a prospective bidder does not require cancellation or amendment of the invitation. 34 Comp. Gen. 684 (1955)." id., pp. 283-284.

The contracting officer states that he notified all bidders on the bidders list of Amendment R-4 by letters mailed on September 15, 1977. All bidders, except Empire, received and acknowledged Amendment R-4, according to the contracting officer. The record supports the contracting officer's contention that he issued notice of the amendment in the normal course of business. Moreover, we find no indication that the Corps deliberately excluded Empire from the competition.

Accordingly, Empire's protest is denied.

  
For The Comptroller General  
of the United States