

**DECISION**



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

FILE: B-186413

DATE: August 4, 1976

MATTER OF: Central Delivery Service

61282

98742

**DIGEST:**

Rejection of bid for failure to acknowledge material amendment to invitation for bids, even though bidder never received amendment, is proper so long as there was no conscious and deliberate effort on part of contracting agency to exclude bidder from competition.

Central Delivery Service (CDS) has protested against award of a contract by the Department of the Interior under invitation for bids (IFB) No. 5761. The low bid of CDS was rejected for failure to acknowledge receipt of amendment No. 1 to the IFB.

On January 26, 1976, Interior issued the IFB which covered shuttle service between the United States Geographical Survey in Reston, Virginia, and the Interior offices in the Washington, D.C. Metropolitan area. Amendment No. 1 was issued on February 11, 1976. This amendment deleted part XXI A in its entirety which provided for the Government furnishing a telephone and office space for the contractor's supervisor/dispatcher. The deleted provision read:

"The Government shall provide, at no expense to the Contractor, telephone, and space in the building for use by the Contractor's supervisor/dispatcher and employees to coordinate services rendered under this Contract. The Contractor shall keep this space in a neat and orderly manner, satisfactory to the technical officer. The Government will not be responsible in any way, for damage to the Contractor's stored supplies, materials or equipment, or the Contractor's employees personal belongings brought into the building."

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Following the rejection of CDS's bid, the contracting officer awarded the contract to the second low bidder, Jim Smith Company, on April 1, 1976. CDS has protested the rejection of its bid on the grounds that it never received the amendment.

In this regard, the record indicates that CDS was not included in the initial mailing list for the IFB. CDS alleges that it requested a copy of the solicitation in response to a synopsis of the procurement in the Commerce Business Daily (CBD). The contracting officer states the contract file does not contain such a request from CDS. The contracting officer sent the amendment to all bidders on the mailing list. Since CDS was not on the initial mailing list nor was there a letter of request from CDS in the contract file, the amendment was not sent to CDS. All other bidders received and acknowledged the amendment.

We stated in Porter Contracting Company, B-184228, January 2, 1976, 76-1 CPD 2:

"\* \* \* 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. Mike Cooke Reforestation, B-183549, July 2, 1975, 75-2 CPD 8. \* \* \*"

The record before this Office does not indicate that the failure of CDS to receive the amendment was the result of any attempt on the part of the Interior to exclude it from competition. Furthermore, the failure of CDS to acknowledge the amendment cannot be waived as a minor informality or irregularity under section 1-2.405 of the Federal Procurement Regulations (FPR) (1964 ed. circ. 1). It reads in pertinent part:

"\* \* \* Examples of minor informalities or irregularities include:

\* \* \* \* \*

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"(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if:

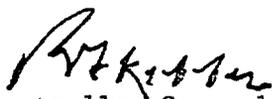
"(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon; or

"(2) The amendment involves only 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." (Emphasis supplied.)

Amendment No. 1 deleted the requirement for the Government to provide for an on-site supervisor/dispatcher office and telephone. The contracting officer indicates that such a change would significantly affect the price of the bids.

Since the failure of a bidder to acknowledge an amendment which affects price cannot be waived as a minor informality or irregularity (FPR § 1-2.405(d)(2) (1964 ed. circ. 1)), the bid of CDS was properly rejected as being nonresponsive.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States