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Little P.L.II

DECISION



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

FILE: B-190294

DATE: March 14, 1978

MATTER OF: Empire Painting Company, Inc.--
Reconsideration

DIGEST:

1. While protester states that it did not receive IFB amendment, record does not support conclusion that amendment was not sent where contracting officer states that IFB amendment was mailed in normal course of business to protester.
2. Contracting officer is not required to give telephonic or telegraphic notice to bidders that an amendment has been mailed to them.

Empire Painting Company, Inc. (Empire) has requested reconsideration of our decision in Empire Painting Company, Inc., B-190294, January 11, 1978, 78-1 CPD 23, in which we denied its protest regarding its not receiving a material amendment to the solicitation.

In that decision we held that Empire's not receiving the material amendment did not require cancellation or amendment of the solicitation. It did not appear from the record that the alleged nonreceipt of the amendment was due to any deliberate attempt on the part of the procuring personnel to exclude Empire from the procurement and there was evidence that the contracting officer had complied with applicable regulations regarding notifying bidders of the amendment.


Empire urges, in effect, that the evidence is insufficient to establish that the contracting officer complied with Armed Services Procurement Regulation (ASPR) § 2.208(a) (1977). Empire argues that the circumstances establish the fact that no notice was even mailed to it. Additionally, Empire states that it was the contracting officer's responsibility under ASPR § 2.208 to give telephonic and telegraphic notice of amendment R-4.

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ASPR § 2.208(a) requires amendments to "be sent to everyone to whom invitations have been furnished * * *" and the contracting officer advises that this was done. We do not agree with Empire's assertion that its failure to receive the amendment "establishes as fact" that the amendment was never mailed to it. In the absence of a showing that there was a deliberate effort to exclude Empire from participating in the competition, its bid must be rejected as nonresponsive. C & S Paper Storage, Inc., B-187602, December 17, 1976, 75-2 CPD 506.

Regarding Empire's argument that the contracting officer was required to supply telephonic and telegraphic notice of the amendment, there is simply no such regulatory or statutory requirement. The fact that such additional notification was given with respect to a previous amendment issued the day before the then designated bid opening date has no bearing on the propriety of the procedures used in the instant case.

Accordingly, our prior decision is affirmed.


Deputy Comptroller General
of the United States