

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

269158

FILE: B-212830.2

DATE: December 6, 1983

MATTER OF: C&M Machine Products, Inc.--Reconsideration

DIGEST:

Prior decision is sustained where protester has not shown that contracting agency's failure to provide amendments to solicitation resulted from specific purpose of excluding protester from competition.

C&M Machine Products, Inc. (C&M), requests that we reconsider our decision in C&M Machine Products, Inc., B-212830, October 4, 1983, 83-2 CPD 421.

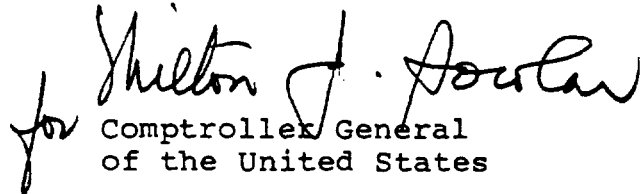
In that decision, we considered C&M's contention that its bid should not have been rejected as nonresponsive for failure to acknowledge material solicitation amendments because C&M never received the amendments. We applied the general rule that a bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive even if the bidder did not receive the amendment unless the procuring agency consciously or deliberately attempted to exclude the bidder from competing in the procurement. We noted that C&M did not suggest that it failed to receive the amendments because of a deliberate attempt to exclude it from the competition and that the Army explained that it did not send C&M the amendments because C&M was not on the bidders mailing list and the Army was not aware of C&M's interest in the solicitation until the bids were opened. We concluded that C&M's bid was properly rejected.

Now, C&M disputes that the Army was not aware of C&M's interest in the IFB until the bids were opened. C&M's position is that the Army must have been aware of C&M's interest in the IFB because the IFB was sent to C&M by the Army. C&M has furnished our Office what purports to be copies of the letter request for the IFB and of the Army envelope in which it arrived. The envelope is addressed to C&M on a C&M label. Apparently, the Army affixed the label to the envelope when the IFB was sent to C&M without adding C&M's name to the bidders mailing list. Thus, it appears

that C&M was not sent the amendments because C&M did not appear on the bidders mailing list and its prior request for the IFB had been overlooked. Moreover, there is nothing that suggests that the omission was the result of anything more than oversight.

In any event, C&M attributes the failure to receive the amendments to the Army's negligence. However, even if the Army was negligent, as C&M contends, that would not change our conclusion. As we indicated in the October 4, 1983, decision, the test is whether the omission resulted from the specific purpose of excluding C&M from the competition. C&M has not shown that to be the case here.

Consequently, the decision of October 4, 1983, is sustained.

for 
Comptroller General
of the United States