



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co., Inc.

File: B-274667

Date: December 24, 1996

Linda Goldman for the protester.

Mark Kallenbach, Esq., Diane D. Hayden, Esq., and George N. Brezna, Department of the Navy, for the agency.

Wm. David Hasfurther, Esq., John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's failure to timely provide copy of solicitation is denied since the agency made a diligent, good faith effort to publicize and distribute the solicitation and, although the contracting agency caused some of the delay in providing the protester with the bid package, there is no evidence that the agency deliberately attempted to preclude the protester from bidding and the protester did not avail itself of every reasonable opportunity to obtain the package and to submit a bid.

DECISION

Adrian Supply Co., Inc. protests the failure of the Department of the Navy to extend bid opening so that it might bid on the two new skid-mounted electrical substations being procured under invitation for bids (IFB) No. N62470-96-B-5116, for the Norfolk Naval Shipyard, Portsmouth, Virginia.

We deny the protest.

The procurement was synopsisized in the Commerce Business Daily (CBD). The synopsis advised prospective bidders that specifications would be available on or about August 6 and that out-of-town bidders should make arrangements for delivery of the bid package and notify the contracting agency of those arrangements. The IFB actually was issued on August 19, with bid opening scheduled for September 18.

On September 4, the contracting agency states it was contacted by an Adrian representative who asked why the firm had not received the bid package after it had requested it and provided a completed Federal Express airbill in late August.

Because the agency could find no evidence of receipt of Adrian's airbill, it prepared a Federal Express airbill using Adrian's Federal Express number and scheduled a Federal Express pick-up for September 5. After the package was not picked up on September 5, the agency learned from Federal Express that--because of high winds caused by Hurricane Fran--the pick-up would not be made until September 9. The agency states that on September 9 Adrian again contacted the agency and was told that Federal Express had picked up the package that morning and the reasons for the delay in the pick-up. Adrian also was told the package would be delivered on September 10. In fact, the package was delivered on September 10.

On September 18, shortly before bid opening, Adrian requested that the contracting officer postpone the bid opening since the firm had not had time to prepare and submit a bid due to the delay in receipt of the solicitation. The agency denied the request, advising that, while an earlier request might have been granted, since bid opening was about to occur, with some bidders attending from out of town, an extension was not possible. Adrian protested this denial. Fourteen bids were received and opened as scheduled.

Adrian notes that it submitted a July 21 facsimile to the agency in which it requested a copy of the IFB and advised that if the agency needed its Federal Express number in order to provide a copy of the IFB to so advise. On August 29, Adrian telephoned the agency to find out why a bid package had not been sent and to provide the agency with its Federal Express number. From September 3 to 5, Adrian made further inquiries to the agency to obtain the bid package. Adrian argues that, despite its diligent efforts to obtain the bid package, the contracting agency breached its duty to make reasonable efforts to provide it.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1994), mandates "full and open competition," the purpose of which is to ensure that a procurement is open to all responsible sources and provide the government with the opportunity to receive fair and reasonable prices. Nomura Enter. Inc., B-248298, July 31, 1992, 92-2 CPD ¶ 64. In pursuit of these goals, it is a contracting agency's affirmative obligation to utilize reasonable methods for the dissemination of solicitation documents and information to prospective competitors. The statutory mandate clearly is violated where an agency attempts to exclude an offeror by deliberately withholding or delaying the transmission of solicitation documents and information. On the other hand, a prospective offeror's nonreceipt of solicitation documents will not warrant recompetition where (1) the agency has made a diligent, good-faith effort to comply with statutory and regulatory requirements regarding notice and distribution of solicitation materials, and the nonreceipt appears to result not from significant deficiencies in the dissemination process, but from isolated errors; and (2) the agency receives sufficient competition to assure reasonable prices. Id.

Here, the agency made a diligent, good faith effort to publicize and distribute the solicitation. In this respect, the agency synopsisized the procurement in the CBD and provided copies of the IFB to 45 prospective bidders. In addition, although the agency made errors that contributed to the delay in Adrian's receipt of a bid package--for instance, the agency failed to respond to Adrian's July 21 facsimile and to Adrian's request for the package at the end of August--it has not been shown that the agency deliberately attempted to exclude Adrian from the competition.

Moreover, notwithstanding the agency's failure to promptly respond to Adrian requests, Adrian contributed to the delay in its receipt of the bid package by not availing itself of every reasonable opportunity to obtain it. Despite the fact that the CBD synopsis indicated that specifications for the procurement would be available on or about August 6, after it sent its July 21 facsimile, Adrian (without knowing the date set for bid opening) made no further effort to obtain a bid package until August 29. It appears likely that had Adrian made further inquiries during this timeframe, it would have received the solicitation significantly earlier.¹ Under these circumstances, and in view of the fact that 14 bids were received, we do not think it was an abuse of discretion for the contracting officer not to delay the bid opening. Nomura Enter., Inc., supra.

The protest is denied.

Comptroller General
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¹Moreover, Adrian could have promptly requested that the agency delay the bid opening. Although Adrian received the bid package on September 10, the firm did not request a bid opening extension at that time; rather, it waited an additional 8 days, until September 18, to request that the agency postpone the bid opening. Finally, Adrian does not explain why it was unable to prepare and submit its bid in the 8 days that was available.