

DECISION



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

FILE: B-190973

DATE: April 20, 1978

MATTER OF: Dash Metal Products Co., Inc.

DIGEST:

Protest calling for cancellation and readvertisement of procurement because of agency's failure to provide copy of solicitation, thus preventing protester from bidding, is denied where failure was inadvertent, there was significant effort to obtain competition, reasonable prices were received, and there was no evidence of deliberate or conscious effort to preclude protester from bidding.

Dash Metal Products Co., Inc. (Dash), has protested any award of a contract for line items 1-38 (paper towel and toilet paper dispensers) under invitation for bids (IFB) No. 7FP-W-51623/3X/7AV, issued by the General Services Administration (GSA). Dash, a previous supplier, did not receive a copy of the IFB and, thus, was unable to bid. Dash requests that the solicitation be canceled as to these items and readvertised.

The solicitation was issued on November 10, 1977, and the procurement was synopsisized in the Commerce Business Daily (CBD) on November 11. The solicitation was sent to 125 prospective bidders, and 10 bids were received. According to GSA, Dash had been on the hand list of prior contractors and bidders, but was inadvertently not transferred to the mailing list.

More than one bid was received on 120 of the 144 line items and all line items protested by Dash, with the exception of item 27. GSA has determined that the price received for item 27 (\$9 each) was reasonable based on the facts that the last bid for the item from Dash for a contract beginning August 16, 1977, was \$8 each; that there has been price inflation since then;

B-190973

and that the \$9 price is 15 percent lower than the bidder offers to any other customer.

The authority vested in the contracting officer to decide whether or not to cancel an invitation and readvertise is extremely broad. Scott Graphics, Inc., et al., 54 Comp. Gen. 973 (1975), 75-1 CPD 302. However, in exercising such authority the impact upon the integrity of the competitive bidding system must be considered and cancellation is permitted only for compelling reasons. Federal Procurement Regulations (FPR) § 1-2.404-1 (1964 ed. circ. 1). Generally, the propriety of a particular procurement must be determined from the Government's point of view on the basis of whether adequate competition and a reasonable price were obtained, not upon whether every prospective bidder was afforded an opportunity to bid. 50 Comp. Gen. 565, 571 (1971). In the absence of probative evidence of a conscious or deliberate intent to impede the participation of a prospective bidder, the failure to receive a copy of the solicitation must be viewed as an inadvertence which generally does not provide a basis to cancel an invitation. 49 Comp. Gen. 707, 709 (1970).

The requirement that there be adequate competition normally is satisfied if competitive bids are received. However, we are aware of no legal requirement that no less than two bids must be received to permit a contract award. In our opinion, there may be sufficient justification for award to the only bidder if there is a significant effort to obtain competition (cf. DeWitt Transfer and Storage Co., B-182635, March 26, 1975, 75-1 CPD 180), a reasonably priced bid is received and there is no deliberate attempt to exclude a particular firm. Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242.

There is no evidence here of a deliberate or conscious effort to preclude Dash from bidding. Competitive bids were received on all items protested but item 27. Synopsizing the procurement in the CBD and soliciting 125 firms is in our opinion a "significant effort to obtain competition." Additionally, GSA determined that the price received for item 27 is reasonable, and the determination of price reasonableness is a matter of

B-190973

discretion which our Office will not question unless there is a showing of bad faith or fraud. Royson Engineering Company, B-187327, January 27, 1977, 77-1 CPD 69. The protester has not alleged bad faith or fraud or shown that GSA's determination concerning item 27 was unreasonable.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States



Mr. Wetherpoon PL I

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

IN REPLY
REFER TO: B-190973

April 20, 1978

The Honorable Gaylord Nelson
Chairman, Select Committee on Small Business
United States Senate

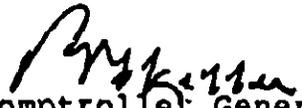
Dear Mr. Chairman:

We refer to your letter to our Office dated February 22, 1978, in regard to the protest of Dash Metal Products Co., Inc., concerning the proposed award of a contract under solicitation No. 7PR-W-31623/3X/7AV, issued by the General Services Administration.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

Deputy


Comptroller General
of the United States

Enclosure

Mr. Kotherappon

PL I



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

IN REPLY
REFER TO: B-190973

April 20, 1978

The Honorable Clement J. Zablocki
House of Representatives

Dear Mr. Zablocki:

We refer to your letter to our Office dated February 6, 1978, in regard to the protest of Dash Metal Products Co., Inc., concerning the proposed award of a contract under solicitation No. 7PR-W-31623/3X/7AV, issued by the General Services Administration.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

Deputy

R. F. K. 1/14
Comptroller General
of the United States

Enclosure