

7104
DECISION



1500/102
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-191870

DATE: July 25, 1978

MATTER OF: General Aero Products Corporation

DIGEST:

1. Rejection of low bid for failure to acknowledge material amendment which increased quantity is proper, although bidder never received amendment, since failure to receive amendment was not result of conscious and deliberate effort by contracting agency to exclude bidder from competition. Contracting agency is not insurer of delivery of procurement documents to prospective bidders.
2. Where only reasonable interpretation of solicitation is that it contemplated and authorized only single award in aggregate for total quantity solicited, rejection as nonresponsive of low bid offering less than total quantity is proper.
3. Whether adequate competition has been obtained in particular procurement is subjective determination within administrative discretion of contracting agency. If there is significant effort to obtain competition and reasonably priced bid is received, there is no legal requirement that no less than two bids from nonrelated firms must be received to permit contract award.

General Aero Products Corporation (General), protests the rejection of its bid under invitation for bids (IFB) No. DAAJ01-78-B-0069(PFR), as amended, issued by the Army Troop Support and Aviation Materiel Readiness Command, St. Louis, Missouri.

The IFB, as initially prepared by the agency, solicited bids for the furnishing of pressure transmitters, identified in the schedule as contract line item 0001. Contract subline item 0001AA required

delivery of 75 of these items to each of two different destination points, for a total specified quantity of 150. Before this IFB was issued, an internal agency request for an additional requirement of 125 pressure transmitters was received by the procuring office. The contracting officer decided that administrative leadtime would be saved by adding the increased quantity requirement by amendment to the IFB. Amendment 0001 was therefore prepared, adding contract subline item 0001AB for an additional quantity of 125 pressure transmitters. The schedule, both initially and as amended, provided blanks for a "unit" price and a "total" price for each subline item. The IFB and Amendment 0001 were simultaneously issued on March 13, 1978. Bids were solicited from 20 firms. The agency states that the invitation, with the amendment, was mailed to all bidders.

The solicitation, in Section C. 10(c), (Standard Form 33A, March 1969), provided:

"The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. Unless otherwise provided in the schedule, offers may be submitted for any quantities less than those specified; and the Government reserves the right to make an award on any item for a quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in his offer."

The schedule, in Section E, however, stated:

"Unit Price F.O.B. Destination shall be submitted on entire quantity of Item 0001* * * *"

Further, the amended delivery requirements were set forth in Section H of the schedule as follows:

"Item No.	Quantity	Time
	(within the number of days stated below after date of contract.)	
0001	75 each	300 DAYS
	75 each	330 DAYS
	125 each	360 DAYS
0002	— FIRST ARTICLE TEST REPORT 150 DAYS"	

Concerning the first article, Section I of the schedule provided:

"(a) The first article is three units of Lot/Item 0001 which shall be tested in accordance with the provisions contained or referenced in this contract. * * *"

Bid opening was held on April 13, 1978, and the following bids were received:

Offeror	Item Number:	0001AA	0001AA	0001AB
	Quantity:	75 ea.	75 ea.	125 ea.
Courter, Inc.		\$403.00	\$403.00	\$403.00
Bendix Corp.		\$309.46	\$309.46	\$309.46
General		\$248.00	\$248.00	

General did not acknowledge Amendment 0001 nor did it bid on the additional quantity specified therein. Its bid was therefore rejected as nonresponsive by the agency.

The protester admits that Amendment 0001 was a material amendment but claims that: (1) it never received the amendment; (2) even without a bid on the additional quantity contained in the amendment, it was

still responsive to the original quantity of the basic IFB and that therefore separate multiple awards should be made for the original and the additional quantities; and (3) if General is determined to be nonresponsive to the entire solicitation, adequate competition does not exist since Courter, Inc. is a wholly owned subsidiary of Bendix Corporation, leaving, in effect, only one contractor in the competition. Award has not been made pending resolution of the protest.

With regard to the protester's first contention, we have stated that the procuring activity is not an insurer of delivery of bidding documents to prospective bidders. The bidder bears the risk of nonreceipt of solicitations and amendments. 52 Comp. Gen. 281, 283 (1972); A. Brindis Company, Inc., B-187041, December 9, 1976, 76-2 CPD 477. Moreover, if a bidder fails to receive and acknowledge a material amendment to a solicitation and adequate competition is obtained, the procurement should not be canceled and resolicited unless failure to receive the amendment is the result of a conscious and deliberate effort by the contracting agency to exclude the bidder from participating in the competition. 40 Comp. Gen. 126, 128 (1960); G&H Aircraft, B-189264, October 28, 1977, 77-2 CPD 329. Based on the record before us, we have no reason to believe that General failed to receive the amendment due to any deliberate effort by the agency to exclude the firm from competition.

Concerning General's second contention that its bid was responsive to the original quantity and that therefore separate multiple awards should be made for the original and the additional quantities, we believe this argument to be without merit. After issuance of Amendment 0001, contract subline item 0001AB, the increased quantity, was added to and became a part of contract line item 0001. While Section C. 10(c) permitted the submission of offers for less than the total quantity unless otherwise provided in the solici-

tation, the schedule specifically provided that offers must be submitted by bidders for the entire quantity of item 0001. Although the solicitation did not contain a statement that a single award would be made in the aggregate as required by Armed Services Procurement Regulation (ASPR) § 2-201(a)C(v) (1976 ed.), neither did the solicitation contain the clause set forth in ASPR § 7-2003.23(b) as required by ASPR § 2-201(a)D(iii) where multiple awards are contemplated.

While the Government in Section C. 10(c) reserved the right to accept any item or group of items of any offer, and even assuming this language to be applicable to the individual subline quantity items of this invitation, we do not believe this provision by itself to be controlling. Reading the solicitation as a whole, including the requirement that offerors bid on the total quantity, the single incremental delivery schedule requiring delivery at specified 30 day intervals, and the first article requirement of three units for the entire contract line item 0001, the only reasonable interpretation of the solicitation, as constituted, is that it contemplated and authorized only a single award in the aggregate for all subline quantities. General, having failed to bid on the additional quantity, was thus nonresponsive.

With respect to the protester's third allegation that adequate competition did not exist after its exclusion, we have stated that whether the required degree of competition has been obtained in a particular procurement is substantially a subjective determination to which a reasonable degree of administrative discretion must adhere. 50 Comp. Gen. 382 (1970); B-177211, March 9, 1973. The procuring activity reports that it believes adequate competition was obtained and that a reasonable price from Bendix Corporation was received. Since 20 bidders were solicited and since the agency feels that Bendix Corporation has offered a reasonable price for the item, we

see no reason to question the agency's determination. In this regard, even if Bendix Corporation's bid was the only responsive bid received, it would still not be mandatory for the agency to cancel the solicitation. As we stated in Culligan Incorporated, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242:

"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, * * * a reasonably priced bid is received and there is no deliberate attempt to exclude a particular firm."

Here, Courter, Inc. duly notified the Government in its bid that it was a wholly owned subsidiary of Bendix Corporation. The contracting officer has determined that Bendix Corporation's bid was reasonable as to price and that award to it would be proper. We cannot conclude that this determination was an abuse of discretion.

For the reasons stated, the protest is denied.


Deputy Comptroller General
of the United States