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Proc I

DECISION



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

[Protest of Navy Contract Award]

FILE: B-195877

DATE: January 22, 1980

MATTER OF: Preventive Health Programs, Inc. ^{DLG} - 00148

DIGEST:

Agency's exercise of broad discretion in deciding not to cancel invitation after bid opening, and readvertise where agency failed to either synopsize procurement in Commerce Business Daily or solicit protester (prior supplier of services), is upheld because (1) there was no deliberate attempt to preclude protester from competition; (2) synopsis was not required; (3) significant effort was made to obtain competition; and (4) award was made at reasonable price.

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Preventive Health Programs, Inc. (PHP), protests the Navy's award of a contract under invitation for bids (IFB) No. N00612-79-B-0083, issued by the Naval-Supply Center, Charleston, South Carolina (procuring activity), on the ground that the Navy improperly failed to solicit PHP's bid. PHP requests resolicitation of the requirement because: (1) PHP was deliberately excluded from the competition; (2) the agency improperly failed to synopsise the procurement in the Commerce Business Daily (CBD); and (3) the award, after an inadequate competition which did not include PHP, is not in the Government's best interest due to unreasonable costs and damage to the principle of open competition.

Based on the following, the protest is denied.

DLG 03662

The instant requirement, for the services of a board certified radiologist with a nuclear medicine license, was requisitioned by the Naval Regional Medical Center, Corpus Christi, Texas (requiring activity). The requisition form listed five sources, three individuals and two corporations. PHP was not listed. The procuring activity's automated bidders mailing list was not used because it did not include

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a radiological services classification due to the small demand for such professional services. For this reason, a mailing list was prepared which, with one exception, used the sources set out on the requisition form. The record does not reveal how the one exception came to be placed on the mailing list.

The following three bids were received at bid opening:

Health Care Services, Inc. (HCS)	\$120,000
James Lively, M.D.	139,500
Richard Mosby, M.D.	157,777

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HCS, the incumbent contractor, had bid the same price the previous year.

Turning to PHP's first contention, that the circumstances demonstrate that it was deliberately excluded from the competition, PHP states that:

"* * * [it] is the largest and best known provider of the types of services in question to DOD [Department of Defense]. PHP has performed or is performing contracts for similar types of services in over twenty Army, Navy, and Air Force hospitals."

PHP, characterizing itself as a "big fish in a small pond," finds it difficult to believe that it could have been inadvertently overlooked. PHP observes that the same procuring activity has in the past awarded contracts to PHP and that PHP is currently performing several of those contracts. The record shows that PHP was solicited and bid the previous procurements of these services.

The Navy denies that PHP's omission was deliberate. The Navy reports that it was unintentional and the result of insufficient attention to detail by responsible personnel. The Navy hopes to

preclude a recurrence of the instant situation by placing additional emphasis, at the working level, on thoroughly researching and carefully developing bidders mailing lists.

As to PHP's second contention, the procuring activity did not synopsise the requirement in the CBD on the basis of Defense Acquisition Regulation (DAR) § 1-1003.1(c)(vii) (1976 ed.) which exempts the synopsizing of procurements for professional services. Moreover, the Navy now questions the propriety of using the exception to synopsizing in light of DAR § 1-1003.(b)(i) which directs that professional services requirements be synopsized when practicable and feasible. The procuring activity has therefore been advised to synopsise future procurements of these services.

Except for the above, the record is devoid of information on the Navy's failure to solicit PHP. In our view, this record is an insufficient basis upon which to conclude that the circumstances show that the Navy deliberately excluded PHP from the competition. Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181.

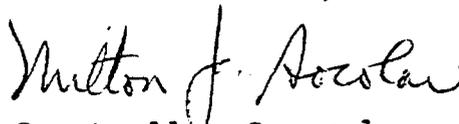
As for PHP's final contention, procuring agencies enjoy broad discretion in deciding whether it is in the Government's best interest to cancel an IFB after opening. We have held that omission of a bidder from the bidders mailing list does not require resolicitation where the omission is not shown to be deliberate, a significant effort is made to obtain competition, and the award is made at a reasonable price. Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242. This rule is applied even where the omitted bidder is the incumbent contractor or only one bid is received. See, Mid-America Food Service, Inc., B-194658, July 26, 1979, 79-2 CPD 56; Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen., supra. We follow this rule because the propriety of a particular procurement is viewed from the Government's point of view, in terms of adequacy of competition and reasonableness of price, and not from the omitted bidder's point of view.

As we discussed, above, we were unable to find evidence of a deliberate attempt to exclude PHP from competing. In addition, three bids were received (five solicited) and the award price in the amount of \$120,000 was the same as the previous year's contract. Price reasonableness is determined on the basis of bids actually received. An otherwise reasonable price does not become unreasonable merely because an omitted bidder alleges that it would have bid a lower price. Bakte Bennett Laboratory, B-190017, November 15, 1977, 77-2 CPD 373. PHP's bid for the previous year's requirement was \$133,236. On this record and in view of the procuring activity's broad discretion in determining whether to cancel an IFB after opening, we cannot conclude that the protested award was not in the best interest of the Government.

Although PHP argues that its situation is similar to that considered in Scott Graphics, Incorporated; Photomedia Corporation, 54 Comp. Gen. 973 (1975), 75-1 CPD 302, we believe the circumstances are distinguishable. In that case, the procuring activity failed to solicit the incumbent contractor, one of only three manufacturers of the item sought. While a number of other sources higher up the distributive chain were solicited, the procuring activity exercised its broad authority to cancel the IFB on the basis that cancellation "enhanced the integrity of the competitive bidding system." Noting the cumulative impact of: (1) the agency's inadvertent exclusion of the incumbent from the automated bidders list; (2) the agency's failure to synopsise in the CBD; and (3) the small number of original sources for the item, we concluded that, in view of the agency's broad discretion in this area, we would not object to the agency's resolicitation of the requirement. In contrast here, the agency exercised its broad discretion and determined that cancellation and resolicitation was not in the best interest of the Government, and there were several potential sources for the services.

PHP has objected to the Navy's delay in furnishing us a report on this protest claiming that its position was materially prejudiced in that the delay denied PHP the opportunity for meaningful relief should the

protest be decided in its favor. The record shows that PHP notified the Navy that it had been omitted prior to contract award. However, in the face of this notice, the Navy chose to exercise its discretion and make an award since bids had been opened and it felt the omission was inadvertent. Finally, we find no prejudice to PHP since the protest is denied.



For The Comptroller General
of the United States