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Annex 20

DECISION



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

FILE: B-203917; B-203917.2 DATE: September 18, 1981

MATTER OF: Balmar Crimp Tool Corp.; Astro
Tool Company

DIGEST:

Protest based on allegation that protester did not receive invitation for bids is denied since adequate competition resulted in reasonable prices and there was no intent on the part of the procuring agency to preclude the protester from competing.

Balmar Crimp Tool Corp. (Balmar) and Astro Tool Company have filed protests under invitation for bids No. FTN-EU-A5075-A-6-29-81 issued by the General Services Administration (GSA). The basis for protest by both Balmar and Astro Tool Company is that GSA failed to solicit a bid from Balmar even though Balmar had previously supplied to GSA similar tools under prior solicitations. The protesters argue that, since there are only 15 to 20 known suppliers of this type of tooling, the contracting officer should have been aware that Balmar had not been solicited. The protesters request that the solicitation be canceled and the requirement be readvertised with all known suppliers solicited.

The invitation was synopsized in the Commerce Business Daily on May 12, 1981. According to GSA, the solicitation was mailed to 229 firms listed on GSA's bidders mailing list, which list did not include Balmar. GSA reports that the contracting officer reviewed previous contract records and compiled a list of 20 additional potential bidders which were then solicited. However, the contracting officer overlooked the fact that Balmar had supplied this type of tool under a prior contract and, therefore, failed to send Balmar an invitation to bid.

We have long held that a contract award is not legally objectionable merely because a potential competitor did not receive a solicitation because of some inadvertent, rather than deliberate, action by the

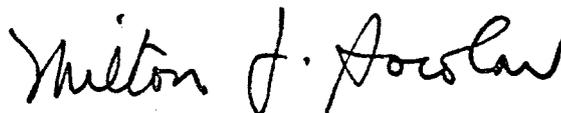
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procuring agency. This is true even where the agency has unintentionally failed to send the invitation to the incumbent contractor. See, for example, Air Products and Chemicals, Inc., B-187543, January 12, 1977, 77-1 CPD 23.

In the present case, GSA invited over 200 potential bidders to participate and received bids from seven firms. Since all items to be awarded are below previous contract prices, the contracting officer determined the proposed award prices to be reasonable. Thus, while it is unfortunate that Balmar did not get an opportunity to submit a bid, it appears that competition was adequate and resulted in reasonable prices being offered. Since GSA's failure to invite Balmar was the result of inadvertence rather than an intentional attempt to exclude Balmar, there is no legal basis upon which the protests can be sustained.

The protests are denied.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States