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DECISION



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

FILE: B-204893.2 DATE: June 21, 1982
MATTER OF: Security Assistance Forces & Equipment OHG

DIGEST:

Contracting Office's refusal to send copies of solicitations to a firm that is known not to be a potential bidder is proper and is not a deliberate exclusion of the firm from the competition.

Security Assistance Forces & Equipment OHG (SAFE) protests contract awards for projects S-SW-0003-77 and S-SW-0928-80, issued by the Fuerth Area Contracting Office, U.S. Army Contracting Agency, Europe (Army) for the repair and alteration of buildings. SAFE contends it was not furnished copies of the solicitations although several written requests were made. The protest is denied.

Solicitations DAJA04-81-R-0418 (project S-SW-0928-80 and DAJA04-81-R-0572(S-SW-0003-77) were issued on July 13, 1981 and July 29, 1981, respectively. Bidder's source lists were prepared for both solicitations with nine prospective construction firms having bidder's list applications on file for construction projects in the area. The Army did not consider SAFE a potential bidder because its "Bidder's Mailing List Application" (Standard Form 129) did not indicate an interest in general construction solicitations. A September 16, 1980 communication from SAFE also indicated it did not bid on a similar construction procurement because it lacked the capacity to perform construction projects.

On July 20, 1981 SAFE requested copies of unidentified solicitations and bidders lists for the renovation of buildings B-9, B-20 and B-74 in Schweinfurt and "several" buildings in Bad Kissingen because it understood there were requirements for

fire alarm systems and smoke detectors that were included in the projects that SAFE was interested in providing in the capacity of subcontractor. On August 3, 1981, SAFE expanded its request to include all solicitations for renovation and construction projects issued from July 20, 1981 through September 30, 1981. SAFE indicated it would identify solicitations which included alarm systems and smoke detector requirements, request bidder's lists, and submit subcontract offers to potential bidders.

The Army refused to comply with SAFE's broad request. On August 10, 1981 the Army informed SAFE it could visit area contracting offices and examine posted solicitations. Copies could be requested, and if available, obtained at that time. On August 14, 1981 SAFE's affiliate, SAFE Export Corporation, requested solicitations for nine specific projects, including those involved in this case. On August 25, 1981 SAFE Export Corporation requested the same solicitations under the Freedom of Information Act and offered to pay a reasonable fee. The Army indicated on August 28, 1981 that the copies would be processed upon receipt of \$32.35. SAFE Export did not pursue the matter. SAFE protested six days later.

SAFE protests that it was denied solicitations that were available to potential bidders. The Army submits that SAFE's requests were made in the capacity of a member of the public rather than a potential bidder and that the Army's response was in accord with Defense Acquisition Regulation (DAR) § 1-1002.1 (DAC #76-24, August 28, 1980).

Although not a potential bidder, SAFE could have obtained copies of the solicitations under DAR § 1-1002.1, and the firm was so advised. Under that portion of the regulation, the contracting officer is required to provide copies of RFPs for pickup at the contracting office, to the extent available, on a first-come-first-served basis to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest in the RFP. The Army informed SAFE how to obtain copies under this provision. The regulation also provides that copies are otherwise to be made available to the public under Appendix L of DAR (Freedom of Information Act). Although the Army was willing to provide copies upon receipt of a processing fee, neither SAFE nor its affiliate, SAFE Export Corporation utilized this provision.

We have held in numerous cases involving an agency's failure to solicit a particular contractor that where adequate competition resulted in reasonable prices and where there is no deliberate or conscious intent on the part of the procuring agency to preclude a bidder from competing, bids need not be rejected solely because a bidder did not receive a copy of the solicitation. Security Assistance Forces & Equipment OHG, B-201839, December 31, 1981, 81-2 CPD 516; Preen Building Maintenance Co., B-182914, April 10, 1975, 75-1 CPD 266.

In B-201839, supra, we held that the Army was required to issue a solicitation to a current contractor that makes repeated requests that the contracting office is aware of. This case is distinguishable because this case involves solicitations that SAFE is neither capable of nor interested in bidding on as a prime contractor. Although DAR § 1-1002.1 requires the contracting officer to provide available copies of the RFPs to potential offerors not initially solicited, the requirement does not apply to SAFE because it is not known as a potential bidder for construction projects. The Army's refusal to provide SAFE with the solicitation therefore does not constitute a deliberate attempt to exclude SAFE from bidding as a prime contractor. See also DAR § 2-205.5, which describes the policy of the Department of Defense regarding the release of bidders mailing lists upon request for a "reasonably described record."

The protest is denied.

for 
Comptroller General
of the United States