

DECISION

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

FILE: B-213903

DATE: April 24, 1984

MATTER OF: Solon Automated Services, Inc.

DIGEST:

Alleged cumulative impact of failure to include on appropriated fund activity's bidders mailing list a protester leasing similar items to nonappropriated fund activity on same base and of an untimely, allegedly misclassified, Commerce Business Daily notice of the procurement which understated the quantity being procured does not require reversal of agency determination not to resolicit where protester fails to show that agency deliberately attempted to exclude it from competition and where, although only one bid was received, the agency made a significant effort to obtain competition and protester has failed to show that award was made at an unreasonable price.

Solon Automated Services, Inc., protests the award of a contract by the Department of the Navy to the sole bidder under invitation for bids No. N00140-83-B-1238 for the lease of washers and dryers for use at the United States Naval Base, Philadelphia, Pennsylvania and at the Naval Regional Medical Center in Philadelphia. Solon complains that it did not receive a copy of the solicitation. We deny the protest.

As issued on August 15, 1983, the IFB requested bids for the lease, with maintenance, of a total of 101 washers and 98 dryers. Bid opening was set for September 9, 1983. By a request dated August 16, the Commerce Business Daily was furnished with a suggested synopsis of the procurement. However, the suggested synopsis indicated that only 89 washers and 93 dryers were being procured, while the CBD notice actually published on August 26 only mentioned the 15 washers and 15 dryers to be used at the medical center. The CBD notice also provided, as did the suggested

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synopsis, that requests for copies of the IFB must be received no later than 14 days after publication of the notice, and specifically warned bidders that the requests must be transmitted by letter or telegram rather than by telephone. However, the notice failed to mention that the fourteenth day--September 9--was the date of bid opening.¹

Copies of the IFB were sent to two firms which had responded to previous solicitations for this requirement, to two firms located through a commercial publication, the Thomas Register, and to three additional firms which requested copies pursuant to the CBD notice. However, only one bid, that of Coin Automatic Laundry Equipment Co. (CALECO), was received. Award was made to CALECO at its bid price of \$18.50 per month for each of 5 double-capacity dryers and \$9.25 per month for each of the remaining 194 washers and dryers. When Solon, which was not on the bidders mailing list, subsequently learned of the solicitation and award, it filed this protest with our Office.

Solon contends that certain errors and omissions in the procurement require termination of the contract with

¹This procurement was initiated prior to the effective date of Pub. L. No. 98-72, 97 Stat. 403 (1983), and therefore was not covered by the amendments which that statute made to section 8(e) of the Small Business Act, 15 U.S.C. § 637, including the provision that:

"(2) Whenever a Federal department is required to publish notice of procurement actions [in the Commerce Business Daily], such department shall not--

(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily
. . . ."

Such notice is to include "a clear description of the
. . . services to be contracted for"

CALECO and resolicitation of the requirement. In particular, Solon alleges that it was omitted from the bidders mailing list. Solon finds its failure to receive a copy of the solicitation particularly difficult to understand, since it was already providing similar services for the base exchange. Solon further alleges that the CBD notice was defective, contending: (1) that it was untimely because the procurement was synopsized 11 days after issuance of the solicitation rather than the 10 days prior to issuance which Defense Acquisition Regulation § 1-1003.2 (Defense Acquisition Circular No. 76-46, August 24, 1983) requires, if possible; (2) that the notice was misclassified because it should have been published under Section W, "Lease or Rental, except Transportation and ADP Equipment," rather than under the section suggested by the Navy and selected by the CBD, that is Section S, "Housekeeping Services;" and (3) that it was misleading because the misstatement of the number of machines to be leased deterred participation by larger contractors interested only in larger quantities and because the 14-day deadline for submission of requests for copies of the IFB expired on September 9, the date set for opening bids.

We have previously held that neither the omission of a firm from the bidders mailing list nor the alleged inadequacy of a CBD notice prevents award and requires resolicitation, even though only one bid was received, provided that there was no deliberate attempt to exclude the protester from competition, there was a significant effort to obtain competition, and a reasonable price was obtained. See Blast Deflectors, Inc., B-212610, January 9, 1984, 84-1 CPD 56.

The Navy has determined that there was no deliberate attempt to exclude Solon or any other potential bidder from competition, that there was a significant attempt to obtain competition, and that a reasonable price was obtained. The Navy denies that Solon was ever on a bidders mailing list maintained by the Naval Regional Contracting Center, which conducted the procurement; states that there is no indication that Solon had ever requested to be placed on any such list; and therefore concludes that Solon was never omitted from such list. The Navy also reports that the exchange is a nonappropriated fund activity for which the contracting center, an appropriated fund activity, conducts no procurements, and declares that no one at the center was aware of Solon's contract with the exchange. Further, we believe that the public advertising, though flawed, of the

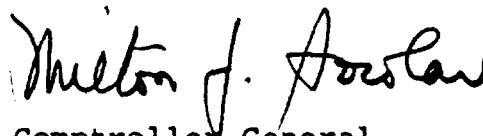
procurement weighs against any inference that contracting officials deliberately sought to exclude Solon from competition. See Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242 (misclassified CBD announcement); see also Valley Construction Company, B-185684, April 19, 1976, 76-1 CPD 266. Likewise, the public advertising and the solicitation of all firms on the bidders list, supplemented here by use of the Thomas Register, has been held to constitute a significant attempt to obtain competition. See Culligan Incorporated, Cincinnati, Ohio, supra; see also Blast Deflectors, Inc., supra; Hartridge Equipment Corporation, B-209061, March 1, 1983, 83-1 CPD 207. As for the agency's determination of the reasonableness of CALECO's bid price, this is a matter of administrative discretion which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. See Introl Corp.; Forster Enterprises, B-209096, B-209096.2, June 9, 1983, 83-1 CPD 633. That CALECO's bid price of \$9.25 per month per regular size machine is the same as or less than the contract price obtained under the previous four procurements for this requirement suggests the reasonableness of the price and Solon has presented no evidence to the contrary.

However, Solon contends that, even if under the case law resolicitation might not be required where a procurement was marred by only one of the errors alleged here, nevertheless the cumulative impact of all of these errors is sufficient to require resolicitation. In support of this contention, Solon cites our decision in Scott Graphics, Incorporated, Photomedia Corporation, 54 Comp. Gen. 973 (1975), 75-1 CPD 302, wherein we held that, given the cumulative impact of the agency's deletion of the incumbent contractor from the bidders mailing list, the failure to synopsize, and the small number of manufacturers for the item being procured, we would not object to the agency's decision to resolicit the procurement. However, we find the facts of Scott Graphics, supra, to be distinguishable. Contracting officials here, unlike those in Scott Graphics, synopsized the procurement. Although Solon argues that, given the cumulative effect of the alleged errors, the CBD notice was of little or no value, we note that the CBD notice in fact drew three requests for copies of the IFB and we believe that the public advertisement of the procurement tends to show that contracting officials

did not deliberately exclude Solon or any other potential competitor but instead made a significant effort to obtain competition. Finally, in contrast to Scott Graphics, where we refused to object to the agency's exercise of its discretion to resolicit the requirement, here the agency has exercised its discretion and determined that resolicitation was not in the best interest of the government. See Preventive Health Programs, Inc., B-195877, January 22, 1980, 80-1 CPD 63.

We instead find that the facts here more closely resemble those in Preventive Health Programs, Inc., *supra*, where we did not overturn the agency refusal to resolicit, even though the agency had omitted a previous supplier from the bidders mailing list and had failed to synopsize the procurement, because it appeared that no deliberate attempt had been made to exclude the protester and the agency had made a significant effort to obtain competition which in fact secured a reasonable price. See also Blast Deflectors, Inc., *supra* (agency determination not to resolicit upheld despite omission from bidders list of firm which had expressed interest in the procurement, a CBD notice allegedly rendered inadequate by misclassification, and the receipt of only one bid).

Since Solon has failed to show that the Navy deliberately attempted to exclude it from competition or that the Navy's significant efforts to obtain competition did not produce a reasonable price, the protest is denied.



Acting Comptroller General
of the United States