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DECISION

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

FILE: B-214272 **DATE:** July 23, 1984

MATTER OF: Coast Canvas Products II Co., Inc.

DIGEST:

1. Award of a contract is not improper solely because a bidder did not receive a copy of the solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no deliberate or conscious intent on the part of the procuring agency to preclude the bidder from competing.

2. GAO will consider only protests involving specific procurement actions, such as whether an award or proposed award complies with statutory, regulatory and other legal requirements, and will dismiss general allegations of past improprieties.

Coast Canvas Products II Co., Inc. protests the award of a contract for 360 end sections of tents, alleging demonstrable prejudice against Coast as a woman-owned small business. We dismiss the protest in part and deny the remainder.

The Defense Personnel Support Center (DPSC), Philadelphia, issued invitation for bids DLA 100-84-B-0247 on December 22, 1983, as a total small business/labor set-aside. Bid opening was January 27, 1984. During the pendency of Coast's protest to our Office, the Defense Logistics Agency granted DPSC permission to proceed with an award to the low bidder, Coronado Technology, Inc.

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Coast alleges that DPSC discriminated against it by failing to send it a copy of the solicitation. According to Coast, this was despite repeated requests to be placed on DPSC's computerized bid mailing list, consistent bidding for this type of procurement, and two letters specifically requesting this solicitation. Coast also cites instances of disparate treatment in past procurements and argues that it improperly has been excluded from competition without formal debarment or suspension. Its treatment, Coast concludes, could only be the result of DPSC's unwillingness to do business with the only woman-owned canvas and tent-making firm seeking government contracts.

DPSC responds that it did not prepare a computerized bidders list specifically for this solicitation, but made use of a "Large Tent List," since the end sections being procured, when combined with compatible intermediate sections, will make large tents to be used during field operations. The agency report includes a copy of this list, and Coast's name in fact appears on it.

The report also describes DPSC's routine solicitation mailing procedures: procurement personnel receive labels containing the names and addresses of bidders from the Contract Processing Branch (the branch responsible for the establishment and maintenance of bidders lists); the labels and original solicitation pages are forwarded to the print shop for reproduction; the solicitations are placed in envelopes and addressed to the bidders, using the labels provided by procurement personnel; and the mailroom delivers the sealed envelopes to the U.S. Postal Service.

Since Coast's name does appear on the bidders list for the protested solicitation, the agency believes that in the ordinary course of business, barring mishap, the firm should have received a copy. In addition, DPSC states, following a January 21, 1984 request by Coast, a second copy of the solicitation in question was sent to it on January 25, 1984.

In general, the award of a contract is not improper solely because a bidder did not receive a copy of the solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no

deliberate or conscious intent on the part of the procuring agency to preclude a bidder from competing. Lewis D. Evans, B-213057, March 13, 1984, 84-1 CPD ¶ 293; Schultes Level, Inc., B-213014, Jan. 10, 1984, 84-1 ¶ 64.

In this case, in its request to proceed with an award to Coronado Technology before resolution of Coast's protest, DPSC determined that Coronado's price was in fact fair and reasonable based on competition between two other bidders. Although Coast has argued that in past procurements for similar items there have been at least three bidders and often more, it has not alleged that the price of the contract awarded to Coronado Technology was unreasonable.

Further, the record does not support a conclusion that there was a deliberate or conscious intent on the part of the DPSC to preclude Coast from competing in the current procurement. DPSC has presented strong evidence that its procedures should have provided Coast with a copy of the solicitation. Even if Coast did not receive one, however, the failure appears to have been inadvertent and not deliberate.

We also note that DPSC has responded to Coast's concerns by meeting with representatives of the firm and providing assurances that in the future: (1) contracting officers are not to remove Coast from any bidders list without approval of the appropriate branch chief; (2) all solicitations for tents and related items will be reviewed by a section chief to ensure that Coast is included; and (3) both the Small Business Representative and the chief of DPSC's Clothing and Textile Contracting and Production Division will monitor future solicitations and correspondence to Coast.

In view of the above, we cannot conclude that Coast has met its burden of proof or established that DPSC deliberately excluded it from competition under DLA 100-84-B-0247. Its protest on this basis therefore is denied.

We will not consider Coast's remaining allegations of disparate treatment in past procurements. Under our Bid Protest Procedures, 4 C.F.R. Part 21 (1984), we deal only

with specific procurement actions, i.e., whether an award or proposed award of a contract complies with statutory, regulatory, and other legal requirements. Ikard Manufacturing Company, B-211041, March 23, 1983, 83-1 CPD ¶ 302; Coonrod and Walz Construction Co., Inc., B-206019, Feb. 4, 1982, 82-1 CPD ¶ 90. In addition, all protests must be filed within 10 working days after the basis for them is known or should have been known. We therefore dismiss those bases of protest involving past contract disputes, failure to solicit for past procurements, and treatment of competitors, since all of the events complained of occurred more than 10 days before Coast's protest was filed on February 1, 1984.

The protest is dismissed in part and denied in part.

for Comptroller General
of the United States