

DECISION

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

29103

FILE: B-215241

DATE: August 17, 1984

MATTER OF: Parking Company of America

DIGEST:

1. Failure to provide potential supplier, even an incumbent contractor, with a copy of a solicitation does not invalidate an award where the protester has not shown that the procuring agency deliberately precluded the protester from competing, that there was inadequate competition, or that the prices obtained were unreasonable.
2. Failure of agency to follow regulations in awarding contract after receiving notice of protest does not affect validity of award.

Parking Company of America protests the award of a contract to A-1 Auto Park, Inc. by the General Services Administration (GSA) under solicitation No. GS-04B-84511 for management and operation of a parking facility at the Federal Building in Atlanta, Georgia. Parking Company, the incumbent contractor, complains that it was improperly deprived of the opportunity to bid because it did not receive a copy of the solicitation. We deny the protest.

The procurement was synopsisized in the Commerce Business Daily (CBD) on February 27, 1984. GSA also sent pre-invitation notices to those firms on the permanent bidders list which had indicated an interest in parking management services and mailed the solicitation to 14 firms on the bidders mailing list. Parking Company, however, did not receive either a pre-invitation notice or a copy of the solicitation. GSA received three bids and awarded a contract on May 16 to A-1 as the high bidder at \$1,507 per month.^{1/}

^{1/} The solicitation provided that award was to be made to the firm offering the highest monthly price for the right to rent and manage the parking spaces.

029780

B-215241

Parking Company argues that A-1's contract must be canceled and the requirement resolicited because its omission from the bidders mailing list and the resulting failure of it to receive a solicitation was caused by a deliberate attempt to exclude the firm from bidding. Parking Company contends that the agency did not receive adequate competition under the solicitation and concludes that it was not solicited because of racial prejudice against the firm, a minority business enterprise.

Failure of an agency to solicit a potential supplier, even an incumbent contractor, does not require resolicitation, provided there was no deliberate or conscious attempt to exclude the supplier from competition and adequate competition resulted in a reasonable price. Schultes Level, Inc., B-213014, Jan. 10, 1984, 84-1 CPD ¶ 64, aff'd on reconsideration, B-213014.2, Feb. 27, 1984, 84-1 CPD ¶ 237. Preventive Health Programs, Inc., B-195877, Jan. 22, 1980, 80-1 CPD ¶ 63.

GSA maintains that there was no deliberate attempt to exclude Parking Company or any other potential bidder from competition. It explains that the protester was not on the bidders mailing list because it had not received a mailing list application from the firm and because a clerical error was made in not checking the list for the incumbent contractor when the solicitation was issued. The protester has not submitted any evidence to contradict the agency's explanation, which appears reasonable on the record. In view of this, we cannot agree with the protester that there was a deliberate attempt to keep it from bidding. Further, we believe the agency's public advertising of the procurement by placing a notice in the CBD weighs against any inference that contracting officials deliberately sought to exclude Parking Company from competition. See Bakte Bennett Laboratory, B-190017, Nov. 15, 1977, 77-2 CPD ¶ 373.

With respect to the contention that the failure to solicit Parking Company was motivated by racial prejudice, the protester has offered no explanation or provided any supporting information or documentation. A bare allegation of racism is not sufficient to show that there was a deliberate effort on the part of the contracting agency to

B-215241

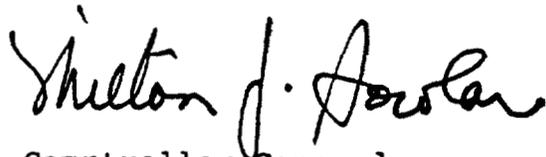
preclude a bidder from competing. See Wallace & Wallace, Inc., B-209859, et al., Dec. 2, 1982, 82-2 CPD ¶ 501.

The protester maintains that GSA did not obtain adequate competition and settled for an unreasonably low price. In response to the effort to obtain competition, GSA received three bids. While two of the bids were under the government estimate, A-1's price was within GSA's estimated price range of \$1,000 to \$1,600 per month. Price reasonableness is determined on the basis of the bids actually received. An otherwise reasonable price does not become unreasonable merely because, as here, an omitted bidder alleges that it would have offered a better price. Preventive Health Programs, Inc., supra. It is clear from the record that A-1's price was properly determined to be reasonable based on the government estimate.

Finally, the protester complains that GSA made award to A-1 notwithstanding Parking Company's pending protest without making a determination under Federal Procurement Regulations, § 1-2.407-8(b). Such a deficiency, however, is a procedural one which does not affect the validity of an otherwise proper award. The Singer Company, B-211857; B-211857.2, Feb. 13, 1984, 84-1 CPD ¶ 177.

Although it is unfortunate that the protester was not provided with a copy of the solicitation, we cannot agree that the award was improper.

The protest is denied.



Acting Comptroller General
- of the United States