

DECISION



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

FILE: B-214622

DATE: September 11, 1984

MATTER OF: Spede Tool Manufacturing Company

DIGEST:

Protest contending that a procurement should be resolicited because the protester did not receive a copy of the invitation for bids until after bid opening is denied. The protester has not shown a deliberate attempt by the agency to exclude it from the competition and the adequacy of competition and reasonableness of the prices obtained is not in issue.

Spede Tool Manufacturing Company protests the failure of the Department of the Navy to send it a timely copy of invitation for bids (IFB) No. N00406-84-B-0036 for grinding wheels and to extend the bid opening date. Spede's protest was submitted by its representative in Washington, D.C., who asserts that foul play and gross negligence by the Navy prevented Spede from competing. We deny the protest.

The record shows that Spede had bid for previous grinding wheel requirements, had made inquiries to the Navy with respect to the protested procurements, had asked to be placed on the bidder's list, but was not among the 13 companies that received the IFB when it was issued on January 26, 1984. The requirement, however, was synopsisized in the Commerce Business Daily on February 8, and on February 9 the protester wrote the Navy requesting a copy of the IFB. Although eventually two copies of the bid package were mailed to Spede, the first, mailed on February 17, was not received until February 29 and bore an incorrect zip code. Bids were opened on February 28.

Even though delay in receiving the bid package prevented Spede from bidding, it is well settled that a procurement will not be disturbed even when a particular

B-214622

firm has been denied an opportunity to bid, provided that the agency did not deliberately attempt to exclude the firm from bidding and that adequate competition and reasonable prices are obtained. UPCO Lock and Safe Service, B-213107, Oct. 4, 1983, 83-2 CPD ¶ 425.

Spede does not challenge the adequacy of the competition or the reasonableness of the prices obtained. However, Spede has offered an affidavit regarding a February 24 telephone conversation with the contract negotiator that Spede says proves bad faith. According to Spede, it requested a copy of the solicitation and the negotiator "spontaneously and unequivocally" promised to extend bid opening to March 8 so Spede would have an opportunity to submit a bid. Spede labels as untrue an affidavit filed by the negotiator, in which she says she did not tell Spede that bid opening would be postponed but that she would see whether postponement was possible.

Spede also says the negotiator has misrepresented the time she initiated a telephone call to Spede on the day of bid opening. According to the negotiator, she was unable to discuss postponement of bid opening with the contracting officer until the morning of the day scheduled for bid opening. She says that she tried to call Spede an hour before the time scheduled for bid opening to advise that firm of the contracting officer's decision to proceed. Spede says the call was not received until 22 minutes after the scheduled bid opening time.

Before we can conclude that the agency acted in bad faith, there must be undeniable proof of a malicious and specific intent to injure the protester. Boone, Young & Associates, Inc., B-199540.3, Nov. 16, 1982, 82-2 CPD ¶ 443. Moreover, because a protester bears the burden of proof, we have frequently noted that where the only evidence concerning a fact is the conflicting statements of the protester and the agency, the issue should be resolved in favor of the agency. Alchemy, Inc., B-207954, Jan. 10, 1983, 83-1 CPD ¶ 18.

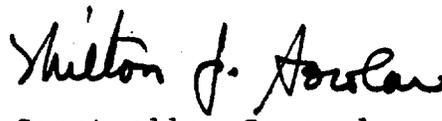
We do not agree that the record in this case establishes bad faith. We think it improbable that the negotiator would have made a categorical promise to

postpone bid opening since, as the Navy points out, she did not have authority to make such a decision. The contracting officer affirms that the negotiator brought the question of a postponement to his attention as she says she had indicated she would. Moreover, the report indicates that it was the contracting officer who decided not to extend the time for bid opening after it was found that a bid package had been sent to Spede on February 17 in response to the firm's February 9 letter. Spede had not mentioned the letter during the February 24 telephone conversation and the contracting officer concluded that Spede should have received the bid package sent on February 17 in sufficient time to respond.

Concerning the contract negotiator's call to advise Spede of the contracting officer's decision, it is evident that the call was placed as a courtesy to Spede, to inform that firm of the decision. It seems to us that the exact time the call was made is irrelevant to our decision since the contract negotiator learned only later that day, in a subsequent call, that Spede had not received the package mailed on February 17.

With respect to the propriety of the contracting officer's decision not to postpone bid opening, it is well established that the decision to extend or not to extend a bid opening date lies within the sound discretion of the contracting officer. See Argus Manufacturing Corp., B-208922, Oct. 28, 1982, 82-2 CPD ¶ 389; Baird Corporation, B-210136, Dec. 20, 1982, 82-2 CPD ¶ 556. We think the contracting officer's decision in this regard was reasonable, based on what he knew at the time. The record shows that mailing was handled by other personnel, and neither the contracting officer nor the negotiator could have known that the zip code on the bid package mailed to Spede on July 17 was erroneous.

The protest is denied.

for 
Comptroller General
of the United States