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DECISION



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

FILE: B-221012 **DATE:** March 18, 1986
MATTER OF: S.C. Services Inc.

DIGEST:

In a small business, small purchase set-aside, an agency's failure to solicit an incumbent contractor does not constitute an adequate reason to cancel the successor contract and resolicit where the incumbent was not deliberately excluded from the competition, adequate competition was obtained, and the awarded contract was reasonably priced.

S.C. Services, Inc. protests the award of a contract under request for quotations (RFQ) DTFA06-85-Q-30143, for janitorial and minor maintenance services at a Federal Aviation Administration (FAA) facility in Fayetteville, North Carolina. S.C. Services argues that the contract should be canceled because, even though its performance as the incumbent contractor was satisfactory, it was denied an opportunity to bid due to the agency's failure to provide it with a copy of the solicitation.

We deny the protest.

The RFQ, issued as a small business-small purchase set-aside on September 4, 1985, was for a base period of 1 year commencing November 1, 1985, with two 1-year option periods. In publicizing the procurement, the FAA states that it posted a notice at the Fayetteville facility and mailed the RFQ to three firms that had recently expressed an interest in performing the required services.^{1/} S.C. Services and several other firms that had expressed

^{1/} Since the proposed contract action was not expected to exceed \$10,000, it was exempt from the statutory and regulatory requirement for synopsis in the Commerce Business Daily. See 41 U.S.C.A. § 416 (West Supp. 1985); Federal Acquisition Regulation, § 5.201 (FAC 84-5, Apr. 1, 1985).

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interest in the predecessor contract were not included on the bidders list. The FAA received three quotations and awarded a contract to Carlos Ray West, which had not been on the bidders list either, on October 15, 1985.

Preliminarily, the FAA contends that S.C. Services' protest should be dismissed for failure to comply with our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985), which require a copy of a protest to be furnished to the contracting officer within 1 day after the protest is filed with our Office. Dismissal is not warranted here, however. The FAA has represented to our Office that it had actual knowledge of the basis of the protest at the time it was filed, so that it was not delayed in responding to the protest. See Colt Industries, B-218834.2, Sept. 11, 1985, 85-2 CPD ¶ 284.

S.C. Services states that it twice requested a copy of the solicitation from the FAA's Atlanta regional office, and that during discussions concerning an extension of its own contract, agency personnel told S.C. Services that they would mail it a copy of the new solicitation when issued.

The FAA responds that while its customary practice is to solicit incumbents, neither S.C. Services nor other interested parties received a copy of the solicitation because of an oversight in the preparation of the bidders list. As noted above, the FAA posted a notice of the procurement in public places and maintained copies of the RFQ at the Fayetteville facility for interested parties. The agency contends that it has no record of S.C. Services requesting a copy of the solicitation during the contract extension period.

The FAA utilized small purchase procedures for this acquisition. Small purchase procedures are excepted from the requirement set forth in the Competition in Contracting Act of 1984 (CICA) that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 41 U.S.C.A. § 253 (West Supp. 1985). For purchases of less than \$25,000, these simplified procedures for acquiring goods and services are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, CICA only requires that agencies obtain competition to the maximum extent practicable--rather than full and open competition, defined as permitting "all responsible sources . . . to submit sealed bids on competitive proposals," 41 U.S.C.A. § 259(c)--when they utilize the small purchase procedures. 41 U.S.C.A. § 253(g). In implementing the statutory requirement, the

Federal Acquisition Regulation (FAR) requires contracting officers, using small purchase procedures for purchases of more than \$1,000, to solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the government, price and other factors considered. FAR, § 13.106(b)(1) (FAC No. 84-5, Apr. 1, 1985). Generally, solicitation of three suppliers is sufficient. FAR, § 13.106(b)(5).

Here, the agency obtained three quotations for the work, and from the record before us, we have no basis to conclude that the awardee's price, which was slightly lower (\$7,243) than the price for the predecessor contract (\$7,388), was unreasonable. Thus, FAA's failure to solicit S.C. Services, the incumbent contractor, is not in itself a violation of the requirement to promote competition in small purchases. Compare Trans World Maintenance, Inc., B-220947, Mar. 11, 1986, 86-1 CPD ¶ _____ (agency's failure to provide incumbent contractor with solicitation in a non-small purchase procurement, thereby effectively precluding it from competing for a follow-on contract, violates the CICA mandate for full and open competition). Termination of the contract and resolicitation here would only be warranted where there is a showing that the agency made a deliberate or conscious attempt to preclude the protester from competing. See G&L Oxygen and Medical Supply Services, B-220368, Jan. 23, 1986, 86-1 CPD ¶ 78; Leavenworth Office Equipment, B-220905, Nov. 12, 1985, 85-2 CPD ¶ 543. No such showing has been made here. In fact, the agency supports the protester's statement that it was satisfied with S.C. Services' performance of the predecessor contract.

Under the circumstances, we deny the protest. We note, however, that the agency plans not to exercise the options under the current contract and to re compete the procurement at the end of the base year.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel