



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keener Manufacturing Company

File: B-225435

Date: February 24, 1987

DIGEST

Protest that agency deprived incumbent contractor of opportunity to bid because agency did not provide it with a solicitation or otherwise inform incumbent that a new solicitation had been issued is denied where incumbent was informed of solicitation by Commerce Business Daily announcement and record shows that reasonable efforts were made to distribute solicitation and that four bids were received.

DECISION

Keener Manufacturing Company protests the proposed award of a contract under invitation for bids (IFB) No. 5FCG-17-86-056, issued by the General Services Administration (GSA), for its annual requirements for shipping and stocking tags. Keener complains that even though it was the incumbent contractor the agency failed to provide it with a copy of the solicitation prior to the bid opening date. We deny the protest.

The procurement was synopsisized in the Commerce Business Daily (CBD) on June 17, 1986. The synopsis, however, erroneously indicated that the solicitation would be issued on or about June 7, 1985. The synopsis also stated that the bid opening date would be 30 days after the solicitation was issued and provided that the contract would run from November 1, 1986, or date of award, whichever was later, thru October 31, 1987. Further, the synopsis included the name and phone number of the contract specialist handling the procurement in GSA's Chicago office.

On July 1, GSA's Chicago office sent Keener a letter to advise the firm that "procurement responsibility for the FSC 8135 items covered by [Keener's] contract(s) GS05F13478 is being transferred effective July 1, 1986," to GSA's New York office. The letter, received by Keener on July 7, included a New York contact point.

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On July 2, the solicitation was issued by GSA's Chicago office with a bid opening date of August 1.^{1/} Four timely bids were submitted. Keener did not bid.

The protester claims that it never received a copy of the solicitation and argues that the June 17 CBD announcement did not constitute proper notice of the procurement because it contained an erroneous solicitation issuance date. Further, the protester says that it saw the June 17 CBD announcement, but expected that another announcement would be issued to correct the error. According to Keener, the July 1 letter that transferred procurement authority to the New York office corrected the CBD notice. Although Keener says that it was "confused" when it received the letter since the CBD notice indicated that the solicitation would come from Chicago, it read the July 1 letter as advising it to expect a new solicitation from New York.

Although GSA admits that Keener was not on its computer created bidder's list or on the contract specialist's handwritten bidder's list, it maintains that the solicitation was sent to Keener. In this regard, GSA reports that its contract specialist says that she mailed a solicitation to all firms, including Keener, that submitted bids on the previous solicitation.

Under the Competition in Contracting Act of 1984 (CICA), agencies are required when procuring property or services to obtain full and open competition through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (Supp. III 1985). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." Id. §§ 259(c) and 403(7). Consequently, we will give careful scrutiny to an allegation that a firm was not provided an opportunity to compete for a particular contract. Trans World Maintenance, Inc., 65 Comp. Gen. 401 (1986), 86-1 CPD ¶ 239. Nevertheless, we think an agency meets CICA's full and open competition requirement when it makes a diligent, good-faith effort to comply with statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials and obtains a reasonable price. The fact that inadvertent

^{1/} GSA explains that since requirements for the items had already been submitted to the Chicago office, the solicitation was issued by that office while the bid opening would take place in the New York office.

mistakes occur in this process should not in all cases be grounds for disturbing the procurement. NRC Data Systems, B-222912, July 18, 1986, 65 Comp. Gen. _____, 86-2 CPD ¶ 84.

Here, although it appears that the agency made a good faith effort, we have some question regarding GSA's procedures used to distribute the solicitation. The contract specialist says she mailed copies to those who responded to last year's solicitation but kept no written evidence of exactly which of these firms such as Keener not on the bidder's list were sent solicitations. Thus, it is difficult to tell for sure whether a solicitation was actually sent to the protester.

Nevertheless, the June 17 CBD announcement, of which Keener says it was aware, provided adequate notice of the new solicitation so that Keener as a reasonably prudent firm should have requested a solicitation or at least inquired as to when it would be issued.

The statement in the June 17, 1986, announcement, that the solicitation would be issued on June 7, 1985, was an obvious error. Based on the information in the CBD notice that GSA contemplated a contract starting in November 1986 and running until October 1987, we think that any prospective contractor would know that bids were being solicited for future requirements of shipping and stocking tags. It was the duty of the firm seeing that notice to either request a solicitation from GSA or inquire as to when the solicitation would be issued. Certainly, Keener, as an incumbent contractor, should have known, despite the error, that its interests were being affected by the CBD announcement.

Further, we do not believe that the protester acted reasonably in concluding not to inquire further when it received the July 1 letter informing it that the authority over the items under its current contract had been transferred to New York. That letter did nothing to clear up the error in the CBD notice and if anything it should have stimulated Keener into making an inquiry.

In view of the protester's failure to respond to the CBD notice and the fact that four bids were received, we see no basis to disturb the procurement.

The protest is denied.

for *Seaman Efron*
Harry R. Van Cleve
General Counsel