



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kahr Bearing
File: B-228550.2; B-228551
Date: February 25, 1988

DIGEST

1. Protest that notices in Commerce Business Daily were misclassified is denied where record shows the procurements were classified according to the items' national stock numbers and in accordance with similar procurements for such items.
2. Protest that agency deprived protester, an approved source for spare part being procured, of opportunity to compete because neither Commerce Business Daily synopsis nor solicitation listed protester's part number for the item is denied where omission of part number was inadvertent and both synopsis and solicitation, a copy of which protester received, listed protester as approved source for the part.
3. Protest that agency deprived protester of opportunity to compete because agency did not provide it with a copy of the solicitation is denied where record shows that the agency's failure to solicit the protester was inadvertent, otherwise reasonable efforts were made to publicize and distribute the solicitation, and three proposals were received.

DECISION

Kahr Bearing protests the award of contracts under request for proposals (RFP) Nos. F41608-87-R-A328 and F41608-87-R-5164, both issued by the Department of the Air Force for jet engine spare parts. Kahr contends in regard to each RFP that it was deprived of an opportunity to compete because the Air Force failed to properly notify Kahr of the solicitations.

We deny the protests.

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Prior to issuing RFP No. A328 for 18,025 connecting links for the F100 engine, the Air Force published a synopsis in the March 27, 1987, Commerce Business Daily (CBD). The announcement described the item being procured by name, dimensions and national stock number (NSN), and identified its functions and applicability to the F100 engine. The synopsis stated that the solicitation would be issued to the listed sources and further noted that all responsible sources could submit an offer. Four sources, including Kahr's parent company, Sargent Industries, were listed in the synopsis. The synopsis also printed the listed sources' respective part numbers for the item, although due to a printing error, Kahr's part number was not accurately listed. The solicitation itself also omitted Kahr's part number, but did list Kahr's parent as a previously approved source for the part. Kahr received a copy of the solicitation but did not submit a proposal. Three proposals, all from sources listed in the CBD notice, were received by the closing date of July 19, and award was made to New Hampshire Ball Bearing, Inc., on September 28.

Upon learning of award through the CBD, Kahr filed its protest with our Office. Kahr claims it never saw the synopsis in the CBD because it was published under the incorrect heading. Kahr also states that although it received a copy of the RFP, it returned a "no bid card" because it did not find its part number listed in the solicitation. Kahr argues that the practical effect of the Air Force's omission of Kahr's part number for the item from the synopsis and the solicitation was not to solicit Kahr at all. Kahr argues that the Air Force had an obligation to inquire why Kahr, one of a limited number of manufacturers of the item, did not submit an offer.

The Air Force concedes that Kahr's part number was misprinted in the CBD synopsis and inadvertently omitted from the solicitation, but states that both the synopsis and solicitation listed Kahr's parent company as an approved source for the part. The Air Force further notes that the NSN which is applicable to all the manufacturers' part numbers, and the prime contractor's part number were listed in both the synopsis and the solicitation. The agency concludes that sufficient information was provided to Kahr to enable it to submit an offer or to protest the omission of its part number from the RFP prior to the closing date for receipt of initial proposals. We agree.

As a preliminary matter, we see no basis to conclude that the synopsis of the RFP was misclassified in the CBD. As

the Air Force explains, a NSN was assigned to the part when it was originally procured. The first two digits of the NSN determine the CBD heading under which all procurements for the part will be listed. In this case, the part's NSN begins with the number "30" and the RFP was synopsisized under Heading 30 in the CBD. Further, at the same time as the synopsis in question was published in the CBD, Heading 30 contained listings for other procurements for parts of this type (connecting links), albeit for other engines.

In addition to the CBD synopsis which listed Kahr's parent as an approved source, Kahr received a copy of the RFP and thus was on actual notice of the procurement. Although due to an inadvertent error, the solicitation did not list Kahr's part number, it listed the NSN of the item and, like the CBD synopsis, identified Kahr's parent as well as three other firms as approved sources. In this regard, Kahr states that due to the volume of solicitations it receives, it looks only at the description of the part, not the entire solicitation. In our view, this does not justify Kahr's failure to be aware of the procurement, since by fully examining the solicitation it would have found its listing as an approved source.

Since the synopsis was properly classified in the CBD and Kahr received a copy of the RFP, we see no basis to conclude that Kahr was deprived of an opportunity to compete. Accordingly, the protest regarding RFP No. A328 is denied.

RFP No. F41608-87-R-5164 (5164)

Prior to issuing RFP No. 5164 for 78,859 connecting links of a different type for the F100 engine, the Air Force published a synopsis in the May 18, 1987, CBD. The synopsis listed the item being procured by name, dimensions, and NSN, identified its functions and applicability to the F100 engine, and listed three approved sources for the part who would receive a copy of the RFP. The synopsis also listed the part numbers for two manufacturers of the item, one of which was Kahr's part number. Kahr, although an approved source, was not identified in the synopsis and did not receive a copy of the solicitation. The RFP, issued on May 29, did not include Kahr's part number or list Kahr as an approved source. Proposals from the three sources identified in the synopsis and solicitation were received by the closing date of July 27, and award was made to New Hampshire Ball Bearing, Inc., on September 28.

Kahr filed its protest with our Office upon learning of the award of the contract through the CBD. Kahr alleges that it did not see the CBD synopsis or receive a copy of the solicitation. As with RFP No. A328, Kahr maintains that the

synopsis was published under the incorrect heading in the CBD. Kahr claims that the Air Force acted improperly by failing to list Kahr as an approved source and by failing to specifically solicit Kahr.

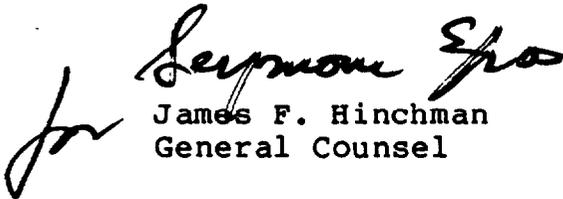
The Air Force admits that it failed to identify Kahr as an approved source in the synopsis and the RFP. Upon receipt of the protest, the Air Force reexamined its records and concluded that Kahr should have been listed. The Air Force reports that it has now taken corrective action to list Kahr for future procurements. However, the Air Force argues that Kahr was not precluded from participating in the procurement. The Air Force claims that although a copy of the solicitation was not sent to Kahr, sufficient information was otherwise provided in the synopsis that Kahr was on constructive notice of the Air Force's requirements and could have requested a copy of the 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. 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985). "Full and open competition" is obtained where "all responsible sources are permitted to submit sealed bids or competitive proposals." See 41 U.S.C. § 403(7); 10 U.S.C. § 2302(3). The term has been further explained in the legislative history of CICA as meaning "all qualified vendors are allowed and encouraged to submit offers . . . and a sufficient number of offers is received to ensure that the government's requirements are filled at the lowest possible cost." H.R. Rep. No. 1157, 98th Cong., 2d Sess. 17 (1984). Accordingly, we give careful scrutiny to an allegation that a firm has not been provided an opportunity to compete for a particular contract. Keener Mfg. Co., B-225435, Feb. 24, 1987, 87-1 CPD ¶ 208.

We believe that an agency meets CICA's full and open competition requirement, when it makes a diligent good faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials and obtains a reasonable price. Rut's Moving & Delivery Service Inc., B-228406, Feb. 11, 1988, 88-1 CPD ¶ _____. The fact that inadvertent mistakes, such as a firm's failure to receive a solicitation, occur in this process will not in all cases be grounds for disturbing the procurement. NCR Data Systems, 65 Comp. Gen. 735 (1986), 86-2 CPD ¶ 84. Whether an agency's efforts in this regard are sufficient thus depends upon the facts and circumstances of each case. In this case, we find that the Air Force satisfied CICA's full and open competition requirement despite its failure to list Kahr as an approved source and forward it a copy of the solicitation.

First, as discussed in detail above in connection with RFP No. A328, the Air Force properly published the synopsis in the CBD under the heading corresponding to the NSN of the part being procured. In addition, the Air Force's failure to solicit Kahr clearly was inadvertent. Most important, Kahr's absence from the procurement did not result in a lack of competition since the Air Force received three offers in response to the solicitation. We have found this sufficient in prior cases to satisfy the full and open competition requirement so as to ensure reasonable prices. See, e.g., NCR Data Systems, supra. In this regard, Kahr argues that one of the three offerors, Pratt and Whitney, should not be considered a viable competitor because it does not manufacture the part itself but instead merely purchases it from one of the other approved sources, and consequently offers a considerably higher price for the part. We find Kahr's argument unpersuasive since, even assuming Pratt and Whitney does not manufacture the part, it is an approved source which has provided the part to the Air Force in the past. Under these circumstances, we do not believe it is appropriate to disturb the procurement process by recommending that the requirement be resolicited. See Rut's Moving & Delivery Service Inc., B-228406, supra.

The protests are denied.


James F. Hinchman
General Counsel