

K Vans



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Continental Elevator Company, Inc.
File: B-241394
Date: October 16, 1990

Dennis J. Green, Esq., Green, Hauptman & Kivett, for the protester.
Catherine Evans, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's failure to furnish incumbent contractor with copy of solicitation is dismissed where protester has not alleged or shown that competition and reasonable prices were not obtained or that agency acted deliberately to exclude protester from the competition.
2. Protest of agency's failure to set procurement aside for small business is untimely where not filed until after bid opening.

DECISION

Continental Elevator Company, Inc. protests the award of a contract under an invitation for bids (IFB) issued by the Department of Veterans Affairs (VA) for elevator maintenance at the VA Medical Center in Des Moines, Iowa. Continental, the incumbent contractor, complains that the agency improperly failed to provide it with a copy of the solicitation and improperly failed to set the procurement aside for small business.

We dismiss the protest.

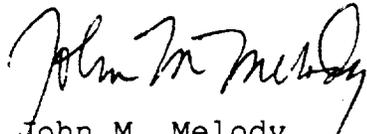
Although agencies generally must solicit their satisfactorily performing incumbent contractors, Federal Acquisition Regulation §§ 14.203-1, 14.205-1 and 14.205-4; Transwestern Helicopters, Inc., B-235187, July 28, 1989, 89-2 CPD ¶ 95, we will not require an agency to resolicit in order to include the incumbent where adequate competition resulted in reasonable prices and where there was no significant deficiency on the part of the procuring agency or a deliberate intent to exclude the incumbent contractor. See id.

049783 / 1142486

Continental does not allege that the agency failed to obtain adequate competition or reasonable prices, or that the agency's omission was the result of a significant deficiency in agency procedures or an intent to exclude Continental from competing. Indeed, Continental's protest submission contains a copy of a letter from the contracting officer explaining that Continental was deleted from the bidder's mailing list because it did not bid on a previous solicitation. Moreover, as the solicitation was synopsisized in the Commerce Business Daily several months before bid opening, Continental was on constructive notice of its contents and had a duty to make reasonable efforts to obtain a copy in order to ensure that the firm would be included in the competition. Rut's Moving & Delivery Serv. Inc., 67 Comp. Gen. 240 (1988), 88-1 CPD ¶ 139. Since Continental has not alleged that the agency's failure to furnish it with a copy of the IFB adversely affected competition or was the result of improper agency action, we have no basis to consider this protest ground.

As for Continental's complaint that the agency improperly failed to set the procurement aside for small business, our Bid Protest Regulations require that protests of alleged solicitation defects be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1990). That Continental did not have a copy of the IFB does not affect the timeliness of its protest in this regard since, as we have noted, Continental had constructive notice of the solicitation's contents.

The protest is dismissed.



John M. Melody
Assistant General Counsel