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Comptroller General  
of the United States

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Washington, D.C. 20548

# Decision

**Matter of:** Sentinel Security & Patrol Services

**File:** B-261018

**Date:** August 9, 1995

Brian C. Mitchell, Esq., Mitchell, Hill & Mitchell, for the protester.

Janet N. Repka, Esq., Department of Defense, for the agency.

Wm. David Hasfurther, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Even though the contracting agency failed to provide the protester with a solicitation amendment which set the revised bid opening date, the protest is denied since no showing has been made that the agency made a deliberate attempt to preclude the protester from bidding and since the protester did not avail itself of every reasonable opportunity to obtain the amendment.

## DECISION

Sentinel Security & Patrol Services protests its exclusion from the competition under invitation for bids (IFB) No. MDA946-95-B-A008, issued by the Department of Defense for armed guard services. According to Sentinel, the agency's failure to furnish it with a solicitation amendment which announced the revised bid opening date should require the solicitation to be recompiled.

We deny the protest.

The previous contract for these services was awarded to American Mutual Protective Bureau (AMPB). In September 1994, that contract was transferred to W.C. Parish Co., Inc. under a novation agreement signed by those firms and the contracting officer.<sup>1</sup> By a modification issued on January 26, 1995, the novation agreement was incorporated into the AMPB contract.

<sup>1</sup>W.C. Parish Co., Inc. does business as Sentinel.

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Also on January 26, the agency issued the IFB for the follow-on contract. The agency states that it sent copies of the IFB to all parties that had requested it in writing in response to a notice in the Commerce Business Daily. The agency explains that the contract specialist responsible for the IFB also sent a copy to AMPB, who she believed to be the incumbent contractor for the services, although AMPB had not requested a copy.

The IFB was amended seven times. Amendments 1 through 3 made changes in the requirements and replaced an addendum to the collective bargaining agreement in the solicitation. The agency reports that these three amendments were sent by regular mail to firms listed on the bidders mailing list, including AMPB. Amendment 4, dated February 24, changed the bid opening date from February 27 to March 14 and was distributed by facsimile to firms that had requested copies of the solicitation. The contract specialist responsible for administering the incumbent contract provided amendment 4 to Sentinel by facsimile transmission when the firm asked for it. Amendment 5, dated February 27, made various changes to the specifications and was sent by regular mail using the bidders list, again including AMPB.

Sentinel protested to the agency by letter of March 9, arguing that the specifications as changed by amendment 5 were ambiguous. That protest, which was addressed to the attention of the contract specialist responsible for the IFB, did not mention any problems receiving amendments; in fact, the protest specifically stated that the firm had received amendments 4 and 5.

In response to that protest, the agency states that it issued amendment 6 on March 14 to firms that had originally submitted requests for copies of the IFB--and thus not to AMPB--to advise prospective bidders that the bid opening date was being "extended until further notice" and that a seventh amendment would be issued to make changes to the IFB and to set a new bid opening date. Amendment 7 was issued on March 20, advising bidders of changes to the IFB and of the new March 31 bid opening date. The agency reports that it sent that amendment to all bidders on the bidders list. According to the agency, because the contract specialist responsible for the solicitation believed that amendment 7 resolved the issues in Sentinel's protest, "a formal response to Sentinel's agency protest was not sent to Sentinel prior to bid opening." Sentinel protested after it learned that bid opening had taken place without it being furnished with amendment 7.

The agency concedes that inadvertent mistakes by its personnel contributed to Sentinel's failure to receive amendment 7. The agency reports that, due to the heavy work

load in the contracting office, the administration of the incumbent contract and the follow-on solicitation were handled by different contract specialists. According to the agency, the contract specialist responsible for the solicitation and updating the bidders list was not aware of the novation agreement and therefore was not aware that Sentinel, instead of AMPB, should have been given the solicitation as the incumbent contractor.

Nonetheless, the agency argues that Sentinel shared the responsibility for not receiving amendment 7 since the firm failed to provide appropriate agency officials with notice of its interest in the procurement and its correct address and failed to advise the agency that it was not being sent the IFB materials. After the novation agreement between AMPB and W.C. Parish, the contracting officer wrote AMPB on February 13, requesting that the firm sign and return three copies of the "Change-of-Name Agreement." That letter indicates that agency officials mistakenly believed that AMPB had simply changed its name to "W.C. Parish Company, Inc., dba Sentinel Security & Patrol Service." Sentinel did not respond to that letter in spite of the fact that it was requested to do so. The agency further explains that because the contract specialist responsible for the IFB did not know of the novation agreement or the subsequent change of address of the contractor and assumed that Sentinel and AMPB were essentially the same merged entity, the bid materials were sent to AMPB, the incumbent contractor, at the address shown on the bidders list.

It is a contracting agency's affirmative obligation to use reasonable methods in disseminating solicitation documents to prospective competitors. Lewis Jamison Inc. & Assocs., B-252198, June 4, 1993, 93-1 CPD ¶ 433. However, a prospective offeror bears the risk of not receiving a solicitation amendment unless it is shown that the contracting agency made a deliberate effort to exclude the firm from competing, or that the agency failed to furnish the amendment inadvertently after the firm availed itself of every reasonable opportunity to obtain the amendment. Viktoria F.I.T., GmbH, B-233125 et al., Jan. 24, 1989, 89-1 CPD ¶ 70.

It is clear that agency personnel were confused as to the relationship between AMPB and Sentinel and believed that a mere name change had occurred, rather than a novation. This confusion appears to have led to the failure to include Sentinel on the bidders list. Nonetheless, Sentinel contributed to its failure to receive the amendments.

First, Sentinel should have known that there was confusion within the agency concerning the firm's address since the firm had problems receiving payments under the incumbent

contract.<sup>2</sup> Second, even though Sentinel, by one means or other, received the IFB and amendments 1 through 5, it received none of those documents through the mail at the firm's address.<sup>3</sup> This should have alerted the firm that there was a problem. Sentinel's failure to receive amendment 6 also should have alerted the firm that there was a problem. In this respect, Sentinel states that the contracting officer told the firm on March 14 that the bid opening date had been postponed. When Sentinel did not receive an amendment to extend the bid opening date, the firm again should have realized that the amendments were not being sent to it and should have informed the agency.

Sentinel also knew, or should have known, that there were different contract specialists handling the incumbent contract and the IFB since the IFB included as a point of contact a contract specialist other than the one handling the incumbent contract. Nevertheless, there is no indication that Sentinel directly informed the appropriate contract specialist that the firm was not receiving bid documents. Under the circumstances, Sentinel should have realized--particularly after it was not mailed some amendments--that it was necessary to inform the contract specialist handling the new solicitation of the firm's address.

Although agency officials did not respond directly to Sentinel with an answer to the firm's agency-level protest, the agency explains that the contract specialist handling the IFB was not aware of the novation agreement and simply

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<sup>2</sup>Although Sentinel complained of its failure to receive payments, when the agency provided a change of name agreement to the firm, Sentinel never returned the agreement. In addition, although the agency admits that a representative of Sentinel hand-delivered to the contract specialist responsible for administering the incumbent contract a January 26 letter from Sentinel on that firm's letterhead requesting a copy of the IFB, the agency states that it did not receive a second page which Sentinel alleges was with the letter and which Sentinel states informed the agency of Sentinel's current address.

<sup>3</sup>Although Sentinel initially stated that it received these amendments directly from the agency, the agency denies that it mailed the amendments to Sentinel since Sentinel was not on the bidders list. Sentinel has not provided the envelopes in which the amendments were sent to show that the amendments were addressed to Sentinel by the agency. By whatever means Sentinel received those amendments, probably from AMPB, we have no basis to conclude that they were mailed to Sentinel by the agency.

assumed that AMPB and Sentinel were a single firm and that Sentinel would receive the answer to its protest in amendment 7. Indeed, Sentinel's March 9 protest may well have reinforced any confusion on the contract specialist's part since Sentinel stated in its protest that it had received amendments 4 and 5.

In our view, the record does not show any deliberate attempt to exclude the protester from the competition. The record merely reflects inadvertent errors on the part of agency officials. In addition, as we explained above, notwithstanding the agency's errors, Sentinel contributed to the confusion and did not avail itself of every reasonable opportunity to obtain the bid documents. Viktorija F.I.T., GmbH, supra; Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. We therefore have no basis to recommend a recompetition.

The protest is denied.

*Mustard S. Melody*  
for Robert P. Murphy  
General Counsel