

DECISION



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

50993

FILE: B-183741

DATE: August 8, 1975

97290

MATTER OF: Xtra Helpers

DIGEST:

Failure of agency to solicit bid from incumbent contractor does not require resolicitation of bids when record shows that agency's failure to furnish copy of solicitation to incumbent was inadvertent, notice of procurement was placed in Commerce Business Daily and adequate competition was received.

Xtra Helpers has protested any award of an indefinite requirements-type contract under GSA Solicitation AT/TS 18297 for materials handling services covering a number of specified cities. The protester argues for cancellation of the Solicitation and a resolicitation of the requirement even though the time for submission of bids has passed and bids have been publicly opened since GSA failed to furnish it an invitation to bid and thereby precluded the firm from bidding.

The solicitation was issued on March 14, 1975. Notification of the procurement was placed in the Commerce Business Daily on March 27, 1975 and 23 bids were opened on April 15, 1975. Three responsive bids were received and the contracting officer considers the low responsive bid to be reasonable since it is in line with the existing contract held by the protester.


Two days after the bid opening, Xtra's representative contacted GSA to inquire about a renewal of its existing contract. This individual was informed that bids had been solicited and opened and that Xtra could no longer submit a bid. Thereafter a protest was filed. It is argued that as the incumbent contractor Xtra should have been furnished a copy of the solicitation. The protester also notes that it was not furnished the initial solicitation for the preceding year's contract but was subsequently allowed to bid. In this connection, the record shows that unlike the instant case that procurement was resolicited since the only bid initially received was unreasonable. The protester also points out that since

it had not been furnished a copy of the preceding year's initial solicitation it submitted an application to be placed on the bidder's mailing list and was advised by GSA that it would receive "all future solicitations for services in which it had indicated an interest." Finally, the protester argues that resolicitation is appropriate in this case since only two "effective" or reasonable bids were received.

The record shows that Xtra Helpers was not included on the automatic mailing list because it improperly filled out the Bidder's Mailing List Application by indicating an interest in "Warehousing Labor" rather than "Materials Handling." However, the contracting officer reports that there was a failure in this case to follow the standard practice of manually mailing the solicitation to the incumbent contractor, which action is taken in addition to the automatic transmission of solicitations to potential bidders.

As a general proposition, we have held that the propriety of a particular procurement must be determined, from the Government's point of view, on the basis of whether adequate competition and a reasonable price were obtained, not upon whether every possible prospective bidder was afforded an opportunity to bid. 50 Comp. Gen. 565, 571 (1971). In the absence of probative evidence of a conscious or deliberate intent to impede the participation of a prospective bidder, the failure to receive a copy of the solicitation must be viewed as an inadvertency which generally does not provide a basis to cancel an invitation or to question an otherwise proper award. 49 Comp. Gen. 707, 709 (1970). The circumstances of the present case, particularly the advertisement in the Commerce Business Daily, the existence of at least two competitive bids for the requirement and the apparent reason for the failure to place Xtra Helpers on the bidder's mailing list for "Materials Handling" lead us to believe that the failure to solicit Xtra Helpers is a mere inadvertency and is not remediable at this time. Non-Linear Systems, Inc., B-182636, February 12, 1975, 75-1 CPD ¶91.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States