

DECISION

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

FILE: B-186403

DATE: August 2, 1976

MATTER OF: Welmetco, Ltd.

DIGEST:

1. Protester's status as a minority-owned small business certified as having "first preference" under Defense Manpower Policy No. 4 is not in itself reason why protester should have "automatically" been sent copy of IFB absent evidence that protester was a prior producer of item being procured or that protester had requested to be placed on bidders list for that item.
2. Agency's refusal to furnish prospective bidder with copy of solicitation on grounds none was available is not legally objectionable since agency is not required to prepare unlimited number of solicitations and it appears from record that adequate competition and reasonable prices were obtained and that agency did not seek to deliberately exclude bidder from competing.

Welmetco, Ltd. (Welmetco) has protested the failure of the Department of the Army to furnish it with a bid set for invitation for bids (IFB) No. DAA09-76-B-6465 issued as a total small business set-aside by the Army Armament Command, Rock Island, Illinois. Welmetco requests that it be allowed to submit a bid and that award not be made unless it has the opportunity to do so. Award of a contract has been withheld pending our decision.

By letter dated March 31, 1976, two days after the IFB was issued, the sales agent for Welmetco requested a bid set for the subject IFB. The Army reports that it could not comply with Welmetco's request because the 52 bid sets prepared had been distributed. Bid sets first were sent to the 19 firms appearing on the Army's bidders list with the remainder to 33 other firms, in the order in which they responded to the synopsis of this procurement appearing in the Commerce Business Daily (CBD). It is also to be noted that 69 requests for bid sets, including the request from Welmetco, could not be honored due to the limited number of bid sets available.

Welmetco contends that as a minority-owned small business certified as having a "first preference" under Defense Manpower Policy No. 4 (DMP-4) it was entitled to receive a bid set automatically. In this connection Welmetco also asserts that it should have received a bid set from the bidders mailing list in accordance with § 2-205.4(b) of the Armed Services Procurement Regulation (ASPR) (1975 ed.).

While the circumstances recited by Welmetco are not in dispute it is our view that they do not support Welmetco's contention that it was entitled to a bid set for the instant procurement. ASPR § 2-205.1(b) (1975 ed.) states in part that "All eligible and qualified suppliers who have submitted bidders mailing list applications, or whom the purchasing activity considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list." In the absence of evidence of record that Welmetco requested to be placed on the bidders list for this item or is a current producer of this item, the omission of that firm from the agency's initial bidders list does not appear objectionable. We agree with the agency that in these circumstances, Welmetco's status as a minority-owned small business certified as having a "first preference" under DMP-4 should not in itself result in the firm's placement on the initial bidders list. The possession of a "first preference" certificate affects Welmetco's eligibility for award under a procurement set aside for labor surplus area concerns, and its status as a labor surplus area concern could become the deciding factor in making an award where tie bids were received. However, we do not think Welmetco's labor surplus status entitled it to the "automatic" receipt of a copy of the IFB as it contends.

ASPR § 2-205.4(b) (1975 ed.), cited by Welmetco, states that "the interest of small business" and "the existence of labor surplus areas" shall be considered in the rotation of excessively long bidders mailing lists. Since there was no rotation of the Army's bidders list for the instant procurement we do not see how that provision of ASPR supports Welmetco's protest.

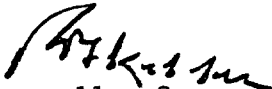
Welmetco not improperly found itself among other firms who requested copies of the IFB as a result of the synopsis in the CBD, and to whom copies of the IFB were furnished in the order in which requests were received until the supply was exhausted. The Army points out that in view of the estimated total contract price of \$13,286.00, the cost of obtaining an additional 69 bid sets would have been unreasonable. Moreover, the Army indicates that distribution of the 52 available bid sets had the effect of assuring adequate competition.

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The Government is not required to prepare unlimited copies of bid sets for prospective bidders. ASPR § 2-203.1 (1975 ed.) provides that IFBs "* * *" shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition * * *". The propriety of this procurement is to be determined upon the basis of whether adequate competition and reasonable prices were obtained and whether there was any deliberate attempt to exclude a particular bidder from the competition, not whether every possible bidder was afforded an opportunity to compete. 50 Comp. Gen. 565, 571 (1971) ; 34 id. 684 (1955); Preen Building Maintenance Company, B-182914, April 10, 1975, 75-1 CPD 222. Also, the fact that Welmetco's request was made prior to the bid opening date in no way obligated the Army to furnish a bid set under the facts as presented. See C.G.C.I., B-184690, March 2, 1976, 76-1 CPD 147. In the instant case nine bids were opened on April 29, 1976, in response to the IFB. We see nothing in the record which suggests that adequate competition and reasonable prices were not obtained or that the Army deliberately attempted to exclude Welmetco from competing.

In view of the foregoing, the protest is denied.

Deputy


Comptroller General
of the United States