

DECISION



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

8175

FILE: B-192401

DATE: October 30, 1978

MATTER OF: U.S. Air Tool Co., Inc.

DIGEST:

1. Unintentional actions of agency which preclude protester (incumbent contractor) from competing on procurement do not constitute compelling reason to resolicit since adequate competition was generated, prices were not shown to be unreasonable, and there was no evidence that such actions were result of deliberate or conscious attempt to preclude protester from competing.
2. Failure of agency to synopsize procurement in Commerce Business Daily does not provide compelling reason to resolicit procurement unless sufficient competition has not been generated or there is proof that failure to synopsize was purposely meant to preclude protester from competing.

U. S. Air Tool Co., Inc. (Air Tool), protests the failure of the General Services Administration (GSA) to advise it of invitation for bids (IFB) No. FTAP-B5-10058-A-5-24-78, a requirements contract for various types of power tools and accessories. Air Tool also objects to GSA's failure to synopsize the IFB in the Commerce Business Daily (CBD). Further, Air Tool protests the omission of its name and part number from the IFB as the brand name for item No. 7, an angle attachment-drill chuck, since Air Tool was the incumbent contractor for that item. Air Tool requests cancellation of the IFB and a resolicitation, thereby giving Air Tool a chance to compete. GSA has advised that no award will be made until our Office has ruled on the instant protest.

The IFB was issued on April 24, 1978. Copies of the IFB were sent to 138 bidders on a printed mailing list and to 28 bidders on a handwritten list, compiled

by the contracting officer. Air Tool's name was on the latter list. However, Air Tool states that it never received a copy of the IFB.

GSA advises that there were 21 bidders responding to the instant IFB and 18 of those responding were from the handwritten list. In addition, the record discloses that on March 30, 1978, the synopsis of the IFB was processed in accordance with GSA's normal procedure for transmittal to the Commerce Business Daily (CBD) for publication. GSA states that it now has discovered that the synopsis was not published in the CBD because there was an insufficient amount of time, less than 15 working days between the receipt of the synopsis by the CBD office and bid opening date, to allow that office to publish the synopsis. Notwithstanding this failure, GSA contends that adequate competition was generated and reasonable prices with respect to item No. 7 were obtained. GSA admits that the omission of Air Tool's brand name and part number under item No. 7 was an error. However, GSA argues that the inclusion of the phrase "or equal" in the solicitation was sufficient to correct the omission.


Unintentional actions of an agency which result in a potential supplier of services being precluded from competing on a procurement do not in themselves constitute a compelling reason to resolicit, as long as adequate competition was generated, reasonable prices were obtained, and no deliberate or conscious attempt was made to preclude any potential supplier from competing. See Bakte Bennett Laboratory, B-190017, November 15, 1977, 77-2 CPD 373. This is true even where the potential supplier of services is an incumbent contractor. Id.

In this case, we believe adequate competition was obtained since 18 bidders participated. Air Tool makes no allegation that the prices submitted by the 18 bidders were unreasonable. Concerning the failure of GSA to advise Air Tool of the solicitation, the record reveals no deliberate or conscious attempt to keep Air Tool from bidding. Apparently, the failure of Air Tool to compete occurred either through the mishandling by the postal service in its transmission of the IFB to Air Tool or through Air Tool's own failure, as the incumbent contractor, to inquire of GSA with respect to the issuance of a solicitation for the new contract period.

With respect to GSA's failure to synopsise the instant procurement in the CBD, it is our view that such failure was not the result of a deliberate or conscious attempt to preclude Air Tool from bidding. Therefore, we believe, based on the record before us, that this unintentional act, as with GSA's failure to advise Air Tool of the solicitation, does not provide a compelling reason to resolicit item No. 7. See Coastal Services, Inc., B-182858, April 22, 1975, 75-1 CPD 250.

Finally, while it is admitted by GSA that omission of Air Tool's brand name and part number was an error, we are of the opinion that the inclusion of "or equal" would have permitted a bid using Air Tool's product. Therefore, such omission had no prejudicial effect on the instant procurement and is not a factor in determining whether or not the instant procurement should be resolicited by GSA.

Based on the foregoing, Air Tool's protest is denied.


Deputy Comptroller General
of the United States