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

FILE: B-214604 **DATE:** August 13, 1984

MATTER OF: Mar-Mac Precision Corporation

DIGEST:

1. An IFB amendment which doubles the delivery requirements for the first 180 days of the contract is material and a bidder's failure to acknowledge such amendment renders its bid nonresponsive.

2. There is no basis for a charge of inadequate distribution of an amendment when the agency mailed the amendment to the same 103 prospective bidders on the bidders mailing list who had received the IFB.

3. The public interest in strictly maintaining the normal competitive bidding procedures outweighs any monetary advantage the government might gain in a particular case by violating those procedures.

Mar-Mac Precision Corporation (Mar-Mac) protests the award of a contract to Delta-X Corporation (Delta-X) under invitation for bids (IFB) No. DAAA09-84-B-0057. The IFB was issued by the Department of the Army and sought offers to provide 300 gunners' guard brackets.

The protest is denied.

The Army issued the solicitation on December 14, 1983, and mailed it to 103 prospective bidders. Mar-Mac was not on the mailing list, but received a copy of the IFB from an agent who was on the list. Prior to bid opening, the Army amended the delivery schedule contained in the IFB. The amendment required the awardee to deliver 50 brackets within the first 180 days rather than 25 as required by the original solicitation. The amendment was sent to the same 103 organizations that had received the IFB, with a notice stating that bidders must sign the amendment and return a copy before their bids would be considered.

Bids were opened on January 18, 1984. Fourteen bids were submitted with prices ranging from $85.45 to $710 per bracket. Seven of the bids--including Mar-Mac's--did not contain signed copies of the amendment; these bids were determined to be nonresponsive. Award was made to Delta-X, the lowest responsive, responsible bidder. Delta-X's price was $178.

Mar-Mac challenges the award on the basis that: (1) its bid should not have been found nonresponsive; (2) the Army's process for distribution of the amendment was defective; and (3) the price offered by Delta-X was unreasonably high.

Mar-Mac argues that the amendment corrected a minor matter in the delivery schedule and was not material and it was inappropriate for the Army to declare its bid nonresponsive for failure to acknowledge the amendment.

The Army responds that the amendment dealt with the delivery schedule and increased the number of brackets to be delivered within the first 180 days from 25 to 50. It contends that this constitutes a material amendment.

Our Office has held that an amendment is material if it affects the delivery terms in more than a trivial or negligible manner. Doyon Construction Co., Inc., B-212940, Feb. 14, 1984, 84-1 C.P.D. ¶ 194. See also Defense Acquisition Regulation (DAR), § 2-405, reprinted in 32 C.F.R. pts. 1-39 (1983). A bidder's failure to acknowledge a material IFB amendment renders the bid nonresponsive and, thus, unacceptable. El Greco Painting and General Contractors Company, Inc., B-208215.2, Nov. 30, 1982, 82-2 C.P.D. ¶ 492. The reason for this rule is that, absent such acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amended IFB. Rockford Acromatic Products Company, B-208437, Aug. 17, 1982, 82-2 C.P.D. ¶ 143.

The amendment in question doubled the delivery requirement for the first 180 days. Under the original IFB, approximately 8 percent of the contract requirements were to be delivered within the first 180 days; after the amendment, the successful bidder was required to deliver over

16 percent within that time period. We cannot conclude that this additional obligation was trivial. Accordingly, the agency determination that Mar-Mac was nonresponsive was appropriate.

Mar-Mac next argues that the Army did not effectively distribute the IFB amendment. Mar-Mac states that the widespread absence of the amendment among the bidders should have alerted the procurement agency to some fault in the distribution of the amendment.

The Army responds that it distributed both the IFB and the amendment to a sufficient number of prospective bidders to ensure adequate competition. It notes that seven of the 14 bidders acknowledged the amendment. Further, the Army points out it sent the amendment to the same organizations that received the original IFB and Mar-Mac should have been able to obtain the amendment from the source that had provided the IFB. Three of the five low bidders were not on the agency's bidder mailing list and, therefore, were not sent copies of the original IFB or the amendment.

Our Office has held that the bidder bears the risk of nonreceipt of a solicitation amendment. A-1 Jersey Mayflower, B-210258, Apr. 25, 1983, 83-1 C.P.D ¶ 417. The propriety of a particular procurement must be determined from the government's point of view, considering whether adequate competition and reasonable prices were obtained--not whether every possible prospective bidder was afforded an opportunity to bid. E&I, Inc., B-195445, Oct. 29, 1979, 79-2 C.P.D. ¶ 305.

We generally will decline to sustain a protest on the basis of inadequate competition where the agency made a significant effort to obtain competition and there was no deliberate attempt to exclude the protester. Hartridge Equipment Corporation, B-209061, Mar. 1, 1983, 83-1 C.P.D. ¶ 207. Mar-Mac has not alleged any attempt to exclude it from competition. In light of the Army's comprehensive mailing to the prospective bidders on the agency's mailing list, we do not find that the distribution process was defective or that the procurement lacked adequate competition. Accordingly, this basis for the protest is without merit.

Finally, Mar-Mac argues that Delta-X's price of $178 per bracket was unreasonably high and, therefore, the IFB should have been canceled and the procurement readvertised. In making this argument, Mar-Mac notes that the Army originally estimated the cost of these brackets at $83 apiece.

The Army responds that the price offered by Delta-X was fair and reasonable. The Army concedes that it originally estimated the cost of the brackets at $83 apiece. However, it points out that before the solicitation was issued, the contracting officer consulted with his industrial specialist and together they concluded that the estimated cost was too low and that the actual price would probably be much higher. This conclusion was documented in September 1983 during the presolicitation phase of the procurement. After bid opening, the Army revised its estimate to $122.43 per bracket. The Army states that this contract had no procurement history upon which it could base its cost estimates; accordingly, those estimates lacked certainty.

Our Office has held that it is not unreasonable for an agency to revise its cost estimates even after bid opening due to the inexact nature of government cost estimates. Arlandria Construction Corporation, B-195044; B-195510, Apr. 21, 1980, 80-1 C.P.D. ¶ 276. Further, an agency determination concerning price reasonableness is a matter of administrative discretion which we will not question unless the determination is unreasonable. Isometrics, Inc., B-204556, Apr. 13, 1982, 82-1 C.P.D. ¶ 340. Finally, a contracting officer is not permitted to cancel an IFB after bid opening without a compelling reason. DAR, § 2-404.1, reprinted in 32 C.F.R. pts. 1-39 (1983).

The protest is denied.

for Milton J. Socolar

Comptroller General
of the United States