

DECISION

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

29888

FILE:

B-216986

DATE:

November 30, 1984

MATTER OF: Resource Engineering**DIGEST:**

1. Protest against agency refusal to reopen competition after failing to solicit protester is summarily denied where: agency made a significant effort to obtain competition; agency did not deliberately attempt to preclude protester from competition; and there is no showing that the award will not be at a reasonable price.
2. Requirement of Small Business Investment Act of 1958, § 223(a), 15 U.S.C. § 637b (1982), that a small business, upon its request, shall be provided with a copy of bid sets and specifications concerning a particular contract, without exception, is only applicable where an agency refuses a small business request and does not apply where agency acceded to the request by mailing requested information which was never received by the small business.

Resource Engineering protests the Department of the Interior's (Interior) refusal to reopen a procurement to allow firms, which did not receive copies of a request for proposals (RFP) for engineering, scientific and laboratory services for the Tennessee Small Operators Assistance Program (Program), to submit proposals. Resource Engineering contends that its rights under Public Law No. 95-507 are being violated.

The protest is summarily denied for lack of legal merit. 4 C.F.R. § 21.3(g) (1984).

Resource Engineering also filed a protest, dated October 26, 1984, with Interior. We have received a copy of Interior's reply to the October 26, 1984, protest and, on the basis of the facts disclosed in Resource Engineering's protest to our Office, its protest to Interior, and Interior's reply to that protest, we conclude that the protest lacks merit.

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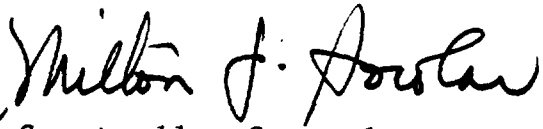
We have held that the failure of a firm to receive a copy of the solicitation does not prevent award and require resolicitation so long as the agency has made a significant effort to obtain competition, a reasonable price was obtained, and no deliberate attempt was made to exclude the protesting firm from competition. This is so even where only one offer is received. Vigilantes, Inc., B-213010, Feb. 8, 1984, 84-1 C.P.D. ¶ 158. Regarding the allegation that Resource Engineering's rights under Public Law No. 95-507 are being violated, we note that the requirement of the Small Business Investment Act of 1958, § 223(a), 15 U.S.C. § 637b (1982), that a small business, upon its request, shall be provided with a copy of bid sets and specifications concerning a particular contract, without exception, is only applicable where an agency refuses a small business request. Lavelle Aircraft Company, B-211479, Aug. 2, 1983, 83-2 C.P.D. ¶ 160, affirmed, Lavelle Aircraft Company--Reconsideration, B-211479.2, Sept. 2, 1983, 83-2 C.P.D. ¶ 300, reaffirmed, Lavelle Aircraft Company--Reconsideration, B-211479.3, Nov. 15, 1983, 83-2 C.P.D. ¶ 560.

The record shows that Resource Engineering held a contract for similar work while the Program was under the control of Tennessee. Interior advertised its intent to establish a contractor source/mailling list in the Commerce Business Daily (CBD). Resource Engineering contacted Interior and asked to be put on the mailing list for the RFP. Resource Engineering was put on the mailing list as were several other firms that appear not to have received copies of the RFP. All of the RFP's were mailed on the same day to all names on the list, including Resource Engineering. Eight firms responded to the mailing, one of which, like Resource Engineering, had written requesting inclusion on the mailing list. Moreover, one proposal was received from a firm located in the same city as Resource Engineering. Interior further reports that it denied Resource Engineering's protest to Interior because, in view of the Program's time schedule, it is not feasible to reopen solicitation proceedings.

In our view, the CBD advertising of the mailing list's existence and the solicitation of all firms on the list, including Resource Engineering, constituted a significant effort to obtain competition. This weighs heavily against any inference of an attempt to exclude Resource Engineering

from the competition. Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 C.P.D. ¶ 242. Moreover, Public Law No. 95-507 is clearly inapplicable since Interior acceded to Resource Engineering's request by mailing it a copy of the RFP. Since there is no indication that the award will not be at a reasonable price, the protest is without merit.

The protest is summarily denied.

for 
Comptroller General
of the United States