



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Valistar International Corporation

File: B-227905

Date: September 16, 1987

DIGEST

Where protester failed to provide agency with its current mailing address and neglected to inquire of publicized solicitation for more than 3 months, during which time the solicitation was issued and offers were accepted, protest alleging that agency failed to obtain full and open competition because agency did not provide protester a solicitation package is denied.

DECISION

Valistar International Corporation protests the award of a contract under request for proposals (RFP) No. DAAK01-87-R-A050 issued by the Department of the Army for an estimated quantity of 5,200 each 20 horsepower military standard engines. Valistar contends that the Army deliberately failed to provide it a copy of the solicitation and thereby, in violation of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (Supp. III 1985), denied Valistar an opportunity to compete for the contract.

We deny the protest.

The requirement was synopsisized in the Commerce Business Daily (CBD) on December 3, 1986.^{1/} That synopsis announced January 16, 1987, as the closing date for the solicitation. Valistar states that on December 12, and December 22, 1986, and again on February 2, 1987, it requested a bid package for the solicitation from the contract specialist designated in the synopsis. The protester states that on each of these occasions, the contract specialist responded that the bid

^{1/} A correction to the December 3 synopsis was also published in the CBD some time later in December, but its only significance, if any, in this case was a change in the maximum estimated requirements under the solicitation.

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packages were not yet available, but that Valistar would be placed on the bidders mailing list and be provided a copy of the solicitation when issued.

The solicitation was issued on March 11, 1987, with a closing date for receipt of proposals set for May 14. It appears that after Valistar's February 2 request for the solicitation, the firm next contacted the Army on May 22, concerning the solicitation package, which it stated it had not received. At that time, the agency informed Valistar that the solicitation had already been issued and that the period for receipt of proposals had closed on May 14.

Valistar then protested to the agency its nonreceipt of the solicitation in sufficient time for the firm to submit an offer. After the Army denied that protest, Valistar filed its protest in our Office. Initially, Valistar contended that, as the incumbent contractor,^{2/} it was deliberately excluded from the competition through the agency's failure to provide it a copy of the solicitation, despite its several requests for a solicitation package. The protester also charged that in excluding the firm from the competition, the Army fatally compromised its obligation to allow Valistar to mitigate damages flowing from any excess costs of reprocurring the requirement. However, in its response to the government's position--that, based on the provisions of 41 U.S.C. § 15 and Federal Acquisition Regulation (FAR), 48 C.F.R. § 42.1204(b) (1986), Valistar has no interest in or liability under the defaulted contract since the novation agreement was never executed--the protester abandoned its contentions that were based upon its alleged incumbency. The protester still maintains, however, that the Army deliberately excluded it from participation in this procurement in violation of the full and open competition requirements of CICA.

The record indicates that Valistar was included on the bidders mailing list, and the agency states that from all appearances a copy of the solicitation was mailed to the

^{2/} Valistar is the corporate successor of Garcia Ordnance Corporation, the previous awardee of a contract for the requirement with which this protest is concerned. The name of Garcia Ordnance Corp. was changed to Conway Tec Corporation (Conway), and Valistar later acquired Conway. A novation agreement between the government, Conway and Valistar was proposed to the government, but before that agreement was concluded, the government terminated for default its contract with Conway (Garcia) for the required engines. The solicitation with which this protest is concerned is the reprourement of that requirement.

protester along with the more than 50 copies of the RFP also mailed to other potential offerors. The Army also states that the address for Valistar shown on the protester's most recent correspondence with the agency is different from the address Valistar gave the contract specialist when it first requested a copy of the solicitation and as the address appears on the agency's bidders mailing list. The Army further states it was never advised of any change in the protester's address until it received the protester's May 22 telephone call, and that it has no knowledge of when the firm changed its address or whether the solicitation documents were forwarded by the United States Postal Service to the new address. The Army further notes that no copy of the solicitation or amendments thereto were returned by the Postal Service as undelivered. The Army maintains that it made a conscious effort to promote full and open competition, as a result of which it received three offers in response to the solicitation.

The protester argues that its nonreceipt of the solicitation could not have resulted from the agency's mailing it to the protester's former address, first, because all mail directed to its former address shown on the bidders mailing list was delivered to another address--a post office box as opposed to the street address the protester listed with the agency. Secondly, the protester states that on March 11, 1987, "utilizing proper Postal Service procedures" (United States Postal Service Change of Address Order), it changed its mailing address from the post office box (which was in the same city as its previous street address) to its present address, a post office box in another city. In support of its assertion that the address change could not have prevented its receipt of the solicitation, Valistar states that it "still currently receives all mail forwarded from both of its last two addresses (including the address in the contracting office's records), and that until early August 1987, one of the company officers personally picked up Valistar's mail from the post office box addresses.

Valistar further maintains that a deliberate effort on the part of the agency to exclude it from the procurement is indicated by the fact that Valistar never received amendment 001 to the solicitation or other solicitations it has requested, apparently from the same contracting office. The protester concludes that these circumstances are indicative of "a clear pattern and course of conduct designed to exclude Valistar" from this and other procurements.

CICA requires that federal agencies obtain full and open competition through the use of competitive procedures when procuring property or services. In view of the intent of the Congress inherent in its enunciation of this standard

for competition in federal contracting, it is our policy to examine carefully an allegation that a potential offeror was not provided an opportunity to compete for a particular contract. Trans World Maintenance, Inc., 65 Comp. Gen. 401 (1986), 86-1 C.P.D. ¶ 239. In our consideration of such an allegation, we will take into account all of the circumstances surrounding a protester's nonreceipt of solicitation materials, including the agency's efforts to comply with the statutory requirements for competition and its explanation of the procurement procedures it followed. Id.

While the standard of full and open competition requires an agency to take reasonable steps to ensure that solicitation materials are made available to all responsible sources, we have held that an agency meets CICA's competition standard when it makes a diligent, good-faith effort to comply with statutory and regulatory requirements regarding notice of the procurement and distribution of those materials and obtains a reasonable price. Keener Manufacturing Co., B-225435, Feb. 24, 1987, 87-1 C.P.D. ¶ 208. Thus, in some instances where the facts indicate that as a result of significant deficiencies in its procurement procedures, an agency has, in essence, consciously and deliberately denied a prospective offeror an opportunity to compete by failing to provide requested solicitation materials, we have held that the agency violated CICA's requirement for full and open competition. Trans World Maintenance, supra; Dan's Moving and Storage, Inc., B-222431, May 28, 1986, 86-1 C.P.D. ¶ 496. In such cases, however, the bidder must have availed itself of every reasonable opportunity to obtain the necessary solicitation documents. Catamount Construction, Inc., B-225498, Apr. 3, 1987, 87-1 C.P.D. ¶ 374.

On the other hand, we have declined to disturb procurements where the prospective offeror did not receive the solicitation materials as a result of a mere inadvertence on the part of the agency, or where the prospective offeror did not diligently seek to obtain--or otherwise contributed to its nonreceipt of--the solicitation materials. See NRC Data Systems, B-222912, July 18, 1986, 65 Comp. Gen. _____, 86-2 C.P.D. ¶ 84; Keener Manufacturing Co., supra; Ace Amusements, Inc., B-222479, July 14, 1986, 86-2 C.P.D. ¶ 65.

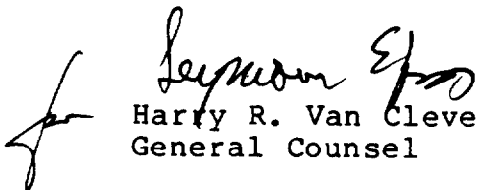
Here, the record indicates that the agency acted in compliance with the statutory and regulatory requirements for full and open competition. The record shows that Valistar was on the bidders mailing list and no evidence has been presented which establishes that the agency did not mail a copy of the solicitation materials to the protester at the address the protester provided. Although the protester contends that if the agency had mailed the documents to its previous address (twice removed), the documents would have

been forwarded, clearly, in the exercise of due diligence, the protester had a duty to provide the contracting officer with its current, correct address--the most reasonable assurance that it would receive the materials by mail. See NRC Data Systems, supra, at 4. Moreover, from a business management point of view, the protester seems to place an overly abundant degree of reliance upon mail forwarding procedures, particularly in light of the fact that in some instances, mail is misdelivered even when properly addressed. That Valistar filed a mail forwarding request with the Postal Service provides no evidence that the agency failed to post the documents to Valistar.

The agency further suggests, and we agree, that Valistar's lack of diligence in its efforts to obtain the solicitation documents is further indicated by its failure to follow up on its request to the contracting office for a period of more than 3 months, even though it knew that the procurement had been advertised in the CBD. The protester counters this point by stating that on three occasions it requested a copy of the solicitation and was told it would be placed on the mailing list. However, Valistar's three requests were made prior to the issuance of the solicitation and, as previously stated, the record shows its name was entered on the bidders list. In our view, Valistar's failure to inquire concerning the issuance of the solicitation over a period of nearly 4 months was not reasonable, particularly in view of its changes of address. See Keener Manufacturing Co., supra, at 3.

In light of these circumstances and the agency's satisfaction of the full and open competition requirement, we see no basis to disturb the procurement. See NRC Data Systems, supra.

The protest is denied.


Harry R. Van Cleve
General Counsel