



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Uniform Rental Service

File: B-228293

Date: December 9, 1987

DIGEST

Where the agency published its intention of issuing a competitive solicitation in the Commerce Business Daily and contacted the protester regarding its interest in receiving the solicitation package and, thereafter, the agency mailed a solicitation package to the protester's correct address, the protester bears the risk of nonreceipt of the solicitation in the absence of substantive proof that the agency deliberately attempted to exclude the protester from participating in the procurement.

DECISION

Uniform Rental Service (URS) protests any award of a contract under solicitation No. 87-86 for uniform and dust control equipment rental issued by the Centers for Disease Control, Department of Health and Human Services, Atlanta, Georgia. URS complains that although it is the incumbent contractor for the services requested, it did not receive the solicitation and was unable to submit a bid. Consequently, URS maintains that the requirement for full and open competition was not fulfilled.

We deny the protest.

On June 17, 1987, the agency announced in the Commerce Business Daily (CBD) its intentions to issue a competitive solicitation for the required services on July 15. By July 21 the agency had received only one written request for solicitation materials so it contacted seven prospective bidders, including URS, to see if they would be interested in receiving the solicitation package. The company addresses of these seven firms were added to the solicitation mailing list. The agency mailed the solicitation materials to the firms on the mailing list, including URS, via first class mail. The mailing address for URS was listed as 1278 DeKalb Avenue, Atlanta, Georgia, 30307 which

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is the correct address. The solicitation was ultimately issued on July 24 and the agency received two bids in response to the solicitation.

URS contends that it never received the solicitation materials by mail. The agency reports that no solicitations were returned by the Postal Service and that each solicitation package contained a return address. URS states that it has experienced problems with improper delivery of its mail to other businesses, including Aratex Services, Inc., the awardee in this case. However, URS states that it does not allege, nor does it have any proof, that Aratex received its solicitation materials due to improper delivery and subsequently did not forward the materials to URS. Rather, URS states that the possibility that Aratex may have received its' solicitation materials brings the integrity of the bidding process into question.

URS requests that the agency resolicit the requirement because the agency failed to obtain full and open competition as required by the Competition in Contracting Act of 1984 (CICA). 41 U.S.C. § 253(a)(1)(A) (Supp. III 1985). In support of its contentions, URS relies heavily on The Thorson Company, General Services Board of Contract Appeals, No. 8185-P, October 30, 1985, reprinted in 85-3 B.C.A. ¶ 18,516 (CCH 1985). In that decision, the Board held that the CICA's requirement for "full and open competition" was violated when an incumbent contractor did not receive the solicitation material. Although, the agency established that it had the incumbent's correct address and that it mailed the solicitation to the incumbent, it failed to allege or prove it had mailed the solicitation to the correct address. The Board noted a history of the agency sending the incumbent's mail to an old address now used by a competitor. URS maintains that this decision was based on the fact that only one offer had been received from a competitor to whom the protester's solicitation may have been sent. URS claims that its case is very similar to the Thorson case and in view of all the circumstances we should rule in favor of URS and the agency should resolicit the requirement. We find the protester's arguments to be without merit.

The agency took all reasonable steps to ensure that URS was notified of the procurement. We have held that the publication of a procurement in the CBD constitutes constructive notice of the solicitation and its contents. G&L Oxygen and Medical Supply Service, B-220368, Jan. 23, 1986, 86-1 C.P.D. ¶ 78. Here, the agency not only announced its intentions to issue a competitive solicitation in the CBD but, it also placed the solicitation announcement on a bid board in the contracting office. Furthermore, the agency contacted URS

to see if it was interested in receiving the solicitation package and added URS to its mailing list when URS expressed interest in bidding. The agency also points out that as the incumbent contractor, URS knew the expiration date of its contract and consequently should have known that a new solicitation would be issued for continuation of the required services. URS maintains that there were wide disparities in the due dates for bids for the past several years and it had no idea when to start being concerned that it had not received the solicitation package. We note that the bid opening date was specified in the CBD announcement and the agency's inquiry regarding the protester's interest should have alerted the protester to expect receipt of the solicitation. We also do not agree that the decision in The Thorson Company, supra, is applicable here. In that case, the agency had a history of sending the protester's mail to an old address now used by a competitor and the only bid received in response to the solicitation was from that competitor. In the present case, the protester has not suggested that the agency has a history of committing mistakes in addressing or sending the protester's mail. Rather, URS states that the Postal Service has a history of improperly delivering its mail and that on a few occasions Aratex has received its mail. In this case, the Centers for Disease Control was not aware of, or responsible for, the protester's problems with delivery of its mail. The agency took the necessary precautions in sending URS its solicitation package by correctly addressing the package to URS and providing a return address.

The bidder bears the risk of nonreceipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude a bidder from participating in the procurement. Maryland Computer Services, Inc., B-216990, Feb. 12, 1985, 85-1 C.P.D. ¶ 187. There is no allegation or proof that the agency deliberately attempted to exclude URS from participating in the procurement. In fact, the agency took all reasonable steps to include URS in the procurement process, by inquiring into its interest in bidding and mailing the solicitation package to URS.

The propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained by the government and not upon whether a particular bidder was given an opportunity to bid. Western Pioneer, Inc., d.b.a. Delta Western, B-220608, Jan. 30, 1986, 86-1 C.P.D. ¶ 109. An agency has satisfied CICA's full and open competition requirement when it makes a diligent good-faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of

solicitation materials, and it obtains a reasonable price. NRC Data Systems, 65 Comp. Gen. 735 (1986), 86-2 C.P.D. ¶ 84. On the issue of whether adequate competition was sought, we note the agency's efforts in announcing the solicitation in the CBD and in contacting URS and other prospective bidders regarding the solicitation. We consider these actions to constitute a significant effort to obtain competition. As a result of these efforts, the agency received two timely bids in response to the solicitation and awarded the contract to the low bidder finding that the prices offered were fair and reasonable. A determination concerning price reasonableness is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith. Western Pioneer, Inc., d.b.a. Delta Western, B-220608, supra. On the record before us, we find no basis to question the determination of price reasonableness here. In accordance with the foregoing we find no basis to disturb the procurement.

The protest is denied.

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James F. Hinchman
General Counsel