



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Crown Management Services, Inc.
File: B-232431.4
Date: April 20, 1989

DIGEST

1. Where full and open competition and a reasonable price are obtained and the record does not show a deliberate attempt by the contracting agency to exclude the firm from the competition, the firm's nonreceipt of a solicitation amendment establishing a new bid opening date does not require cancellation and resolicitation of the procurement.
2. While agency generally may not proceed with award unde procurement subject to General Accounting Office protest, there is nothing which prohibits the agency from proceeding with bid opening and all other steps up to the point of award.

DECISION

Crown Management Services, Inc., protests the award of any contract under Department of the Navy invitation for bids (IFB) No. M00681-88-B-0019, for laundry and dry cleaning services. Crown contends that the agency improperly failed to furnish the firm copies of amendments establishing the revised bid opening date, that this failure precluded it from submitting a bid, and that the requirement should be resolicited to give Crown a chance to bid.

We deny the protest.

The IFB initially provided for a July 27, 1988, bid opening but amendments 0001 and 0002 extended the date to September 1. Crown then challenged certain IFB terms in a protest to our Office (ultimately denied), and the Navy issued amendment 0003, extending the bid opening indefinitely, pending resolution of the protest. In its November 1 administrative report in response to Crown's protest, the Navy indicated that, by amendment, it would modify the IFB to correct certain of the deficiencies alleged by Crown. On December 6, the Navy issued amendmen

0004, which made these corrections and also established December 28 as the new bid opening date. Crown allegedly never received amendments 0003 and 0004, but did receive informal information that the bid opening had been extended indefinitely, and thus did not submit a bid.

It is well-established that a firm bears the risk of not receiving IFB amendments unless it is shown that the contracting agency made a deliberate effort to prevent the firm from competing, or that, even if not deliberate, the agency failed to provide the amendment after the firm availed itself of every reasonable opportunity to obtain it. American Sein-Pro, B-231823, Aug. 31, 1988, 88-2 CPD ¶ 209. This rule stems from the fundamental principle that, from the government's point of view, the propriety of a particular procurement depends on whether adequate competition and reasonable prices are obtained, not on whether a particular firm was afforded an opportunity to compete. See Fast Electrical Contractors, Inc., B-223823, Dec. 2, 1986, 86-2 CPD ¶ 627.

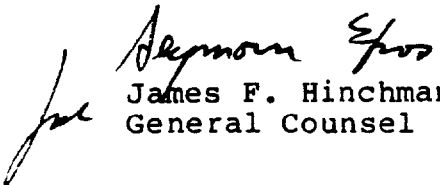
There is no evidence that the Navy deliberately did not send the amendments to Crown. The record shows that Crown, the incumbent contractor, was one of 31 firms included on the bidders mailing list, and the cognizant Navy contract specialist has submitted a statement indicating that she sent all firms on the mailing list two copies of the amendments by first class mail within 24 hours of the December 6 effective date. Crown has presented no evidence other than nonreceipt, that the Navy failed in its duty to mail the amendments in a timely manner. The record also shows that Crown never advised the Navy that it had not received the amendments, and took no steps to obtain them (despite the Navy's statement in its November 1 administrative report that it would issue an additional amendment correcting several IFB deficiencies).

Crown alleges that the competition received--three bids, one of which was nonresponsive--was inadequate, and that the requirement should be resolicited to achieve full and open competition. We have held, however, that where as here the agency has complied with all statutory and regulatory requirements in soliciting offers, the receipt of two bids constitutes adequate competition. See Shemya Constructors, B-232928.2, Feb. 2, 1989, 89-1 CPD ¶ 108; Uniform Rental Service, B-228293, Dec. 9, 1987, 87-2 CPD ¶ 571. Crown does not allege, and the record contains no evidence, that the prices received are not reasonable.

Crown's nonreceipt of the amendments thus provides no basis for sustaining the protest. See Southern Technologies, Inc., B-228516, Jan. 21, 1988, 67 Comp. Gen.____, 88-1 CPD ¶ 57.

Crown also complains that the Navy should not have proceeded with the bid opening in the face of its protest since, had Crown's protest been successful, necessitating resolicitation, disclosure of bid prices would have resulted in an auction situation. However, while award generally may not be made while a protest is pending, 31 U.S.C. § 3553(c)(1) (Supp. IV 1986), there is nothing that precludes an agency from proceeding with a procurement up to the point of award. In any case, as Crown's protest was denied, there in fact was no auction situation here.

The protest is denied.


James F. Hinchman
General Counsel