



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GSX Government Services, Inc.

File: B-239549.2

Date: January 7, 1991

Christopher J. Jaekels, Esq., for the protester.
James Sparks, Esq., and Vicki E. O'Keefe, Esq.,
Department of the Navy, for the agency.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Prospective bidder's late receipt of amendment reestablishing bid opening date does not warrant cancellation and recompetition where late receipt appears to be an inadvertent, isolated occurrence not suggestive of a deliberate attempt to exclude the protester, and where protester did not inquire as to the status of the procurement during an approximately 1 month period following dismissal of protester's earlier protest which should have put protester on notice that competition could be resumed.

DECISION

GSX Government Services, Inc. protests the award of any contract under invitation for bids (IFB) No. N62472-90-B-2239, issued by the Department of the Navy for the removal and disposal of soil contaminated with JP-5 jet fuel, at Glenview Naval Air Station (NAS), Illinois. GSX contends that the Navy improperly, and in bad faith, failed to timely provide GSX with a solicitation amendment setting the new bid opening date.

We deny the protest.

The IFB was issued on April 29, 1990, and had an original bid opening date of May 24. Bids were not opened as scheduled because on May 4 GSX challenged the issuance of the IFB in a protest filed in our Office, claiming that the work was covered by an existing requirements contract between GSX and the Defense Logistics Agency (DLA). Since the issue raised in GSX's protest to our Office was the same as that raised by GSX

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in a claim before DLA, we dismissed the protest on July 5. We mailed copies of our decision on that date to the protester and to the headquarters of the Navy command responsible for the procurement, which transmitted our decision through channels to the contracting activity. On August 8, the contracting activity issued Amendment 003 to notify recipients of the original IFB that the bid opening date was reestablished for August 21. Dissemination of this amendment, on August 8, took two forms. First, the amendment was posted on the bulletin board outside of the contracting office, where all bidder information and notices are routinely posted. Second, according to a declaration signed by the Navy's contract specialist, a copy of the amendment was mailed to each of the 81 potential offerors on the bidders list, including GSX, whose name she says she recognized as the result of its prior protest. She states that she addressed and stuffed each of the 81 envelopes, which she gave to a clerk-typist in the office to take to the Glenview NAS Post Office. In her declaration, the clerk-typist states that before depositing the letters in the mailbox, she confirmed that she had an envelope addressed to each of the 81 bidders on the bidders list. The Glenview NAS Post Office then applied the postage and processed the mail according to its own procedures.

Fourteen responses (including 3 "no bids" and 11 priced bids) were received by the August 21 bid opening date. Of these responders, 10 acknowledged receipt of amendment No. 3. No bid was received from GSX. On August 22, GSX notified the Navy that it had just received its copy of the amendment. Upon review the contracting officer identified three other potential offerors on the bidders list who also did not timely receive the amendment.

GSX filed a protest in our Office on August 29, charging that the contracting officials, in retaliation for GSX's prior protest, mailed GSX's copy of the amendment approximately 5 to 6 days after mailing it to all other sources in a deliberate effort to exclude GSX from competing. To substantiate its claim, GSX provided us with a copy of the envelope which enclosed the amendment which shows a Glenview "official mail" postage meter stamp of August 12 and a "No[rth] Suburban, IL" cancellation dated August 14. GSX requests that our Office recommend cancellation of the IFB, the termination for convenience of any contract awarded under the solicitation, and the resolicitation of the requirement.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), contains mandate for "full and open competition," the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and


reasonable prices. In pursuit of these goals, it is a contracting agency's affirmative obligation to utilize reasonable methods for the dissemination of solicitation documents to prospective competitors. See Ktech Corp., B-240578, Dec. 4, 1990, 90-2 CPD ¶ _____. Obviously, an attempt to exclude an offeror by deliberately withholding or delaying the transmission of solicitation documents violates the statutory mandate. On the other hand, a prospective offeror's nonreceipt of solicitation documents will not warrant recompetition if the nonreceipt appears to result from an isolated occurrence as opposed to significant deficiencies in the dissemination process and the agency will receive a reasonable price. In addition to the agency's obligations, we have recognized that prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain the solicitation documents, especially in a sealed bid procurement. See Lake City Management, B-233986, Mar. 9, 1989, 89-1 CPD ¶ 259.

Under the circumstances here, the Navy fulfilled CICA's full and open competition requirement. In order to conclude that the Navy's procurement personnel singled out GSX for disparate treatment in a deliberate effort to exclude it from the competition, we would have to give no credence to the declarations signed by the Navy's contract specialist and clerk-typist, who have stated that copies of the amendment were prepared for all potential bidders on the mailing list--as the list itself indicates--and delivered to the Glenview NAS Post Office simultaneously. Although the amendment was postmarked later than August 8, there is no evidence to suggest that this was not the result of the actions of the Postal Service, for which the Navy is not responsible. See Southern Technologies, Inc., 67 Comp. Gen. 204 (1988), 88-1 CPD ¶ 57. Further, the agency did receive 11 priced offers, three of which were within the government estimate by approximately 12 percent (either above or below), indicating a reasonable price could be obtained. In addition, we are not persuaded that GSX availed itself of every reasonable opportunity to obtain the amendment. Of all potential sources, GSX as the firm whose protest delayed the acquisition, was in the best position to know when its protest was resolved by our Office so that the agency could continue this competition. In the month between our dismissal of GSX's protest and the issuance of the amendment, however, GSX made no inquiries of the Navy as to when the new bid opening date would be set.

Since the agency utilized reasonable methods for distributing the amendment, there is no evidence which proves that GSX's late receipt of the amendment resulted from a deliberate effort to exclude it from the competition as opposed to an isolated occurrence, and it appears that award can be made at

a reasonable price after full and open competition, we see no basis to disturb the procurement.

The protest is denied.


for James F. Hinchman
General Counsel