



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southeastern Enterprises, Inc.

File: B-245491.2

Date: January 17, 1992

Patrick McNally for the protester.
Howard B. Rein, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's nonreceipt of an amendment containing a Department of Labor wage determination does not warrant cancellation and recompetition where the record does not indicate that the agency deliberately attempted to exclude bidder from competition or otherwise violated applicable regulations governing the distribution of amendments.

DECISION

Southeastern Enterprises, Inc. protests the award of a contract to any other firm under invitation for bids (IFB) No. N62472-91-B-1656, issued by the Navy for custodial services for Navy buildings at the Naval Education and Training Center, Newport, Rhode Island. Southeastern states that it did not receive an amendment to the IFB containing a Department of Labor wage determination and therefore it was improperly prevented from submitting a bid.

We deny the protest.

The IFB was issued on July 24, 1991, with bid opening scheduled for August 22. Attachment J-2 of the solicitation states that a wage determination for the procurement was not presently available and that an amendment would be issued when the determination is issued by the Department of Labor. Three amendments to the IFB were issued. Amendment Nos. 1 and 2, issued on August 5 and August 6 respectively, included drawings and revised specifications. Amendment No. 3, issued on August 7, contained the Department of Labor wage determination. All three amendments state that bid opening was not extended. At the bid opening on August 22, 21 bids were received from 20 bidders on the mailing list and 1 bidder who was not on the list. All 21 bidders

acknowledged receipt of amendment No. 3. Award has not been made pending the resolution of this protest.

Southeastern argues that it was prevented from bidding because it did not receive amendment No. 3, which contained the wage determination. The protester further states that it attempted to contact the contracting agency 3 days prior to bid opening concerning the wage determination, but was unable to do so because the telephone lines were down due to a hurricane. The protester concludes from this that the contracting agency made a "conscious effort to exclude offerors from competing."

It is the contracting agency's affirmative obligation to use reasonable methods, as required by the Federal Acquisition Regulation (FAR), for the dissemination of solicitation documents, including amendments to prospective competitors. FAR §§ 14.203-1; 14.205; 14.208; Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242. This, however, does not make the contracting agency a guarantor that these documents will be received in every instance. Power Eng'g Contractors, Inc., B-241341, Feb. 6, 1991, 91-1 CPD ¶ 123. In fact, as a general rule, the risk of nonreceipt of an amendment rests with the offeror. Western Roofing Serv., supra.

There is no evidence that the agency's dissemination process here was deficient or that it was contrary to regulation. The agency has submitted a signed statement by a contract specialist from the office responsible for compiling the mailing list for the IFB and for mailing amendments to prospective bidders. The contract specialist states that it is standard procedure to mail a copy of every amendment to each prospective bidder on the mailing list and to then note the date that the amendment was mailed next to the prospective bidder's name. In this case, the contracting agency has also provided a copy of the mailing list, which lists Southeastern as one of the prospective bidders that was mailed a copy of the IFB. Date stamps on the mailing list indicate that the Navy mailed amendment No. 3 on August 7 to all bidders, including Southeastern.

Here, the agency used its standard procedure for distributing the amendments and at least 21 firms received the amendment; no other firm has complained that it has failed to receive the amendment. There is nothing in the record to indicate that Southeastern's failure to receive the amendment resulted from a deficient agency dissemination process, a regulation violation, or a deliberate effort to exclude it from competition, as opposed to an isolated occurrence.

Further, it is unfortunate that the protester waited to contact the agency for a copy of the wage determination until a few days before the bid opening when the telephone lines were down due to a hurricane. Nevertheless, the fact remains that the solicitation, issued on July 24, alerted all bidders to the fact that an amendment would be issued when the contracting agency received the wage determination. The protester could have contacted the agency at an earlier date to obtain the wage determination.

The protest is denied.



for James F. Hinchman
General Counsel