



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Family Carpet Service, Inc.; Rubins
Contractors, Inc.

File: B-243942.3; B-243942.4

Date: March 3, 1992

Timothy Sullivan, Esq., Dykema Gossett, for Family Carpet Service, Inc., Stanley Greenberg for Rubins Contractors, Inc., the protesters.

Larry N. Gandal, Esq., Shulman, Rogers, Gandal, Pordy & Ecker, for All Star Carpet and Bedding, Inc., an interested party.

Kenneth R. Pakula, Esq., and Lydia R. Kupersmith, Esq., General Services Administration, for the agency.

David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Prospective bidder's failure to receive a solicitation amendment does not warrant a resolicitation where there is no showing that the cause of the failure was the result of a deliberate attempt by the contracting agency to exclude the bidder or the result of deficiencies in the contracting agency's solicitation dissemination process.

2. Allegation that an awardee submitted an unreasonably low price does not form a valid basis of protest.

DECISION

Family Carpet Service, Inc. (FCS) and Rubins Contractors, Inc. protest an award under invitation for bids (IFB) No. GS-11P91MJD0020, issued by the General Services Administration (GSA) as a small business set-aside to obtain carpet services for various Washington, D.C., metropolitan area locations. FCS maintains that the agency should resolicit because FCS did not receive the IFB amendment that set the date for bid submission and thus improperly was precluded from submitting a bid. Further, FCS and Rubins contend that the proposed awardee's bid is so low as to cast serious doubts regarding the firm's responsibility.

We deny the FSC protest in part and dismiss it in part. We dismiss the Rubins protest.

The IFB was issued on April 19, 1991. Due to a protest against the terms of the IFB filed with our Office by Professional Carpet Service (PCS), the IFB was amended to postpone the bid submission date until further notice. After our Office dismissed PCS's protest (Professional Carpet Serv., B-243942, Sept. 10, 1991, 91-2 CPD ¶ 236), GSA issued IFB amendment No. 4 on September 23. This amendment established a new bid opening date of October 23. According to the agency, FCS was on the bidder's list, and an employee of GSA has stated that the amendment was mailed to all firms on that list on September 23. Six bids were received. Two were responsive; four were found to be nonresponsive for failure to provide a bid guarantee and were rejected. The low responsive bid, submitted by All Star Carpet and Bedding, Inc., was priced at \$298,325.80. The other responsive bid was priced at \$993,123.38. Because its bid was significantly lower than the other bids received, All Star was requested to review its bid and confirm its price. All Star verified its bid in writing. The contracting officer also reviewed the past performance of All Star, who has been the incumbent contractor for this work for the last 3 years. Additionally, All Star and the contracting officer met to review the scope of the work involved and to ensure that all contractual requirements were understood. Based on this review, the contracting officer determined All Star responsible. Award has been withheld pending our decision on the protest.

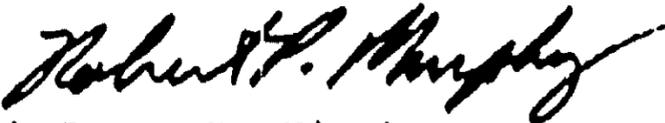
The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide 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 use reasonable methods for the dissemination of solicitation documents to prospective competitors. See Power Eng'g Contractors, Inc., B-241341, Feb. 6, 1991, 91-1 CPD ¶ 123. This, however, does not make the contracting agency a guarantor that these documents will be received in every instance and, concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain solicitation documents, especially in a sealed bid procurement. See Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Thus, a prospective contractor normally bears the risk of not receiving a solicitation amendment unless there is evidence (other than non-receipt by the protester) establishing that the agency

failed to comply with the FAR requirements for notice and distribution of amendments, Shemya Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108, provided that the prospective contractor availed itself of reasonable opportunities to obtain the document. EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326; Western Roofing Serv., B-232666.4, Mar. 5, 1991, 91-1 CPD ¶ 242; Fort Myer Constr., Corp., B-239611, supra.

We believe that under the circumstances, GSA has fulfilled the full and open competition requirement imposed by CICA. The record shows that the protester was on the bidder's mailing list, was sent a copy of the solicitation, and received all the amendments issued by the agency except for amendment No. 4. An employee of the agency has stated that amendment No. 4 was mailed to all parties on the bidder's mailing list, and, other than the protester's non-receipt, there is no evidence that the amendment was not mailed to FCS. The record does not show that any other firm did not receive the amendment. The agency posted weekly and monthly bid opening schedules in its bid room. While the protester states that it periodically called the agency to inquire about this procurement, and was told that nothing would be done until our Office had issued a decision on the PCS protest, FCS does not allege or show that the protester spoke with the agency after the agency's receipt of our decision or, after being notified of a protest pending with our Office, that the firm asked our Office to be placed on the recipient list for that protest decision. The record simply fails to contain evidence that the GSA dissemination process was deficient.

The two protesters' contention that the awardee cannot perform at its low price, and therefore GSA's determination that the low bidder was responsible was improper, is not for our consideration. A protester's claim that another offeror has submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation have been misapplied. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Where, as here, there is no such showing, we have no basis to review the protest.

The FSC protest is denied in part and dismissed in part, and the Rubins protest is dismissed.


for James F. Hinchman
General Counsel