



Comptroller General
of the United States

Washington, D.C. 20548

147233

Decision

Matter of: Nomura Enterprise Inc.

File: B-248298

Date: July 31, 1992

Al Weed, Nomura Enterprise Inc., for the protester.
Craig E. Hodge, Esq., and Carol Rosenbaum, Esq., Department
of the Army, for the agency.
Stephen Gary, Esq., David Ashen, Esq., and John M. Melody,
Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Although the contracting agency initially provided protester an incorrect bid opening date, the agency was not required to delay bid opening where the incorrect information was provided to only one bidder and the error was inadvertent; the agency made good-faith efforts to publicize and distribute the solicitation; adequate competition was obtained; the protester was informed of the correct date 2 weeks prior to bid opening; and the protester did not request an extension of bid opening until the day before opening.

DECISION

Nomura Enterprise Inc. (NEI) protests the award of any contract under invitation for bids (IFB) No. DAAK01-92-B-0072, issued by the Department of the Army for camouflage aluminum stakes. NEI asserts that the Army prevented it from competing by improperly refusing to extend the bid opening date.

We deny the protest.

The IFB was synopsisized in the Commerce Business Daily (CBD) on January 23, 1992. On March 9, the Army issued copies of the solicitation to 200 prospective bidders, including NEI. In the copy that NEI received, the lines for the date and time of bid opening were blank. NEI telephoned the contracting specialist on March 16 to obtain the missing information and was advised incorrectly that the bid opening

date was April 21.¹ When NEI received an amendment to the IFB on March 26, it learned of the correct bid opening date, April 9. (The amendment, which modified certain specification requirements, stated that there was no change in the April 9 bid opening date.) On April 8, NEI telephoned the contracting officer to request an extension of the bid opening date, on the ground that it had assumed that bid opening was to occur on April 21 and it was unable to respond to the earlier, correct date of April 9. The Army, which by that time had received 19 bids, denied NEI's request. NEI thereupon filed this protest. The Army proceeded with the opening of bids on April 9, receiving a total of 42 bids; it has deferred award pending the resolution of the protest.

NEI asserts that the failure of its copy of the solicitation to specify a bid opening date rendered it defective and, together with the misinformation as to bid opening date which the firm received orally from the agency, led to NEI's improper exclusion from the competition. The protester explains that it had requested subcontractor quotes and based its internal pricing process on the assumption that bids were not due until April 21. Although it attempted to expedite the pricing process when it learned the correct bid opening date on March 26, it was unable to prepare its bid in time to meet the April 9 date. By denying its request for an extension of the bid opening date, NEI argues, the agency improperly precluded it from competing.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2303(a)(1)(A) (1988), mandates "full and open competition," the purpose of which is to ensure that a procurement is open to all responsible sources and provide the government with the opportunity to receive fair and reasonable prices. GSX Gov't Servs., Inc., B-239549, Jan. 7, 1991, 91-1 CPD ¶ 12. In pursuit of these goals, it is a contracting agency's affirmative obligation to utilize reasonable methods for the dissemination of solicitation documents and information to prospective competitors. The statutory mandate clearly is violated where an agency attempts to exclude an offeror by deliberately withholding or delaying the transmission of solicitation documents and information. Id. On the other hand, a prospective offeror's nonreceipt of solicitation documents will not warrant recompetition where (1) the agency has made a diligent, good-faith effort to comply with statutory and

¹The Army reports that while it cannot definitely confirm that the contracting specialist provided the incorrect information, it is likely that she did; at the time, she was also working on another procurement that had an April 21 bid opening date and easily could have confused the two dates.

regulatory requirements regarding notice and distribution of solicitation materials, and the nonreceipt appears to result not from significant deficiencies in the dissemination process, but from isolated errors; and (2) the agency receives sufficient competition to assure reasonable prices. This is so even where the nonreceipt has the effect of eliminating the prospective offeror from the competition. See North Santiam Paving Co., B-241062, Jan. 8, 1991, 91-1 CPD ¶ 18; Gamma Microwave, Inc., B-236598, Dec. 18, 1989, 89-2 CPD ¶ 562.

We find that the Army made a diligent, good-faith effort to publicize and distribute the solicitation. First, the agency synopsisized the procurement in the CBD and mailed the IFB to 200 prospective bidders. Further, it is clear that the agency systematically entered the correct bid opening information on the copies of the solicitation. Contracting officials stamped the bid opening date and wrote the bid opening time on each individual copy of the solicitation, as evidenced by the fact that the first page of each of the 42 copies of the solicitation returned as part of a bid bore the correct time and date of bid opening--1 p.m., on April 9. No potential bidder other than NEI advised the agency that its copy of the solicitation lacked bid opening information. It appears, therefore, that the date and time of bid opening were missing only from the copy of the solicitation issued to NEI.

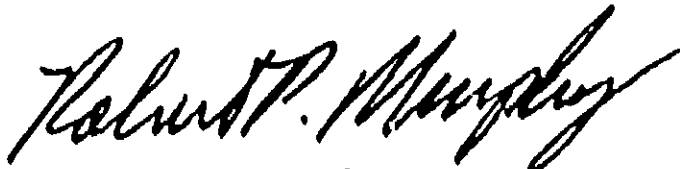
Further, NEI does not assert, and we find no evidence, that the omission of the date from NEI's copy of the IFB and the agency's incorrect advice in this regard were intentional. Nothing in the record indicates that the failure to enter the bid opening date and time on NEI's copy of the solicitation was anything but an unintentional, albeit unfortunate, oversight occurring in the course of individually preparing 200 copies of the solicitation. Similarly, the contracting specialist's incorrect advice as to the date of bid opening resulted, not from some intentional act, but from her inadvertently confusing the relevant date here with that for the other procurement on which she was working. We therefore conclude that NEI's nonreceipt of the correct bid opening information was an inadvertent, isolated occurrence. GSX Gov't Servs., Inc., supra. Finally, since the Army received 42 bids, several of which were below the independent government estimate, and NEI does not allege that the prices were unreasonable, we have no basis to question the adequacy of the competition or the reasonableness of the prices.

Moreover, NEI could have shown more diligence in responding to the solicitation. Although it learned of the correct opening date on March 26, it waited for almost 2 weeks, until the day before opening to request an extension.

Further, it is not apparent from the record why NEI was unable to prepare its bid in the nearly 2 additional weeks left before opening; it is the agency's position (and NEI doesn't explain otherwise) that 2 weeks was sufficient time to prepare a bid.

In these circumstances, and in view of the fact that 42 bids were received, we do not think it was an abuse of discretion for the contracting officer not to have extended the time for bid opening. See Webb Elec. Co. of Florida, Inc., B-223980, Dec. 19, 1986, 86-2 CPD ¶ 684; R&E Elecs., Inc., B-223723, Sept. 8, 1986, 86-2 CPD ¶ 273.

The protest is denied.


for James F. Hinchman
General Counsel