

Gorczycki
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Holiday Inn-Laurel

File: B-249673.2

Date: December 22, 1992

Mark R. Eskew for the protester.

Maj. Bobby G. Henry Jr., Department of the Army, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency failure to solicit a small business concern, even though that firm had submitted a solicitation mailing list application well prior to issuance of the solicitation, violated Federal Acquisition Regulation provisions governing the distribution of solicitation documents and resulted in the agency's failure to obtain full and open competition.

DECISION

Holiday Inn-Laurel, a small business concern, protests an award to BWI/Parkway Hotel Group Limited Partnership-T/A Ramada Hotel BWI Airport (Ramada Hotel) under invitation for bids (IFB) No. DAKF27-92-B-0013 issued by the Department of the Army, Fort Meade, Maryland, for lodging, meals, and transportation services associated with the Military Entrance Processing Station, Baltimore, Maryland. Holiday Inn asserts that the award was improper because the Army did not send it an IFB.

We sustain the protest.

On December 5, 1991, the contract specialist assembled the mailing list, which included the incumbent contractor, all bidders from the prior solicitation for the requirement, all firms that did not submit a bid for the prior IFB but indicated continued interest in future solicitations, and all prospective bidders appearing on the Standard Army Automated Contracting System (SAACONS) data base. According to the Army, the name of a firm is entered on the SAACONS data base when the firm submits a Standard Form (SF) 129 "Solicitation Mailing List Application," responds to a synopsis in the Commerce Business Daily (CBD), or obtains a solicitation from the Army.

The synopsis for this IFB was published in the CBD on December 13. Additionally, a description of the IFB was posted on the solicitation announcement board in the contracting office and remained on the board until bid opening. After the initial assembly of the mailing list, the contracting specialist added to the list firms who either responded in writing to the CBD synopsis or requested a copy of the IFB from the Fort Meade Directorate of Contracting. Prior to issuing the IFB, 17 firms, not including the protester, were added to the mailing list for this IFB. Four additional firms were provided solicitations after its issuance.

The Army issued the IFB on April 21, 1992, and eight bidders responded by the May 29 bid opening. The Army subsequently awarded a contract to Ramada Hotel as the low responsive, responsible bidder at \$1,033,613.30. Contract performance has been stayed, pending our resolution of this protest.

Prior to issuance of the IFB, Holiday Inn's Director of Sales met with the Chief of Contract Administration at Fort Meade in early March 1992 to discuss the Army's bidding process and to express Holiday Inn's interest in future solicitations. At that time Holiday Inn was told that it would be included on future mailing lists once it submitted an SF 129. Subsequent to this meeting, on March 17, 5 weeks before the IFB was issued, Holiday Inn's Director of Sales submitted an SF 129 to a clerk at the contracting desk at Fort Meade. The Director of Sales also periodically visited the contracting office at which time she states that she reviewed the solicitation announcement board. Holiday Inn asserts that it first learned of this IFB on August 13, after which it filed this protest asserting that the Army improperly failed to send it an IFB.

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. Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242; Davis Enters., B-249514, Dec. 4, 1992, 92-2 CPD ¶ ____; Professional Ambulance Inc., B-248474, Sept. 1, 1992, 92-2 CPD ¶ 145; Essex Electro Eng'rs, Inc., B-234089.2, Mar. 6, 1990, 90-1 CPD ¶ 253. In pursuit of these goals, a contracting agency has the affirmative obligation to use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. Id. In this respect, and as applicable here, Federal Acquisition Regulation (FAR) § 14.205-1 requires contracting agencies to include on applicable solicitation mailing lists any firm

that submits an SF 129 or obtains the solicitation through the contracting agency. In addition, FAR § 19.202-4(c) requires contracting agencies to encourage maximum response to solicitations from small business concerns by sending solicitations to all such concerns on the solicitation mailing list.

Here, Holiday Inn was told that it would be included on future mailing lists after submitting an SF 129. It did so, generally requesting solicitations for lodging and meal services to the Army 5 weeks before the IFB was issued, but was not placed on the IFB mailing list. The Army acknowledges that Holiday Inn's SF 129 would have been entered into the SAACONS data base approximately 1 week to 10 days after submission. Since it is not disputed that the SF 129 was submitted on March 17, Holiday Inn should have appeared in the data base weeks prior to the IFB April 21 issuance date.

FAR § 14.203-1 requires that IFBs be sent to prospective bidders in accordance with FAR § 14.205. This latter section requires the establishment of solicitation mailing lists and envisions that all those on the lists will be solicited unless the number of bidders on a list is excessively long.¹ FAR § 14.205-1(b) provides that "[a]ll eligible and qualified concerns that have submitted solicitation mailing list applications . . . shall be placed on the appropriate solicitation mailing list." The protester's qualifications and eligibility are not in dispute;² neither is the fact that the protester's application was submitted several weeks before the IFB was issued or that it would have been "appropriate" to include the protester on the mailing list for this IFB. It thus appears that the only reason that the protester was not included on the mailing list was that the list was not based on information that was available to the agency reasonably prior to the IFB issue date, but instead was compiled 4 months prior to IFB issuance and 2-1/2 months prior to the protester's submission of the SF 129.

We find that the Army's actions here were inconsistent with the statutory and regulatory framework mandating full and open competition. The protester was not included on the mailing list, and thus was not sent a solicitation, even though it submitted an SF 129 well before the IFB was

¹The Army does not assert that the bidders list was excessively long here.

²We note that Holiday Inn submitted the low quote for the interim services while this protest is pending and is apparently currently performing the services.

issued. While an agency may need to prepare a solicitation mailing list from a generalized data base at some reasonable point prior to solicitation issuance, we think it unreasonable an agency to prepare the list so far in advance that a firm submitting an SF 129 5 weeks prior to solicitation issuance is not included on the list. Here, the agency actually prepared the list 4 months in advance of the actual issuance of the solicitation and did not update it to ensure inclusion of all potential sources that had expressed an interest in competing, even though an updated computerized data base was available. Reliance on 4-month old information, instead of the most current information, to establish a mailing list defeats a primary purpose of the statute and regulation--that is, to obtain full and open competition through the soliciting of bids from those qualified vendors who have expressed interest in being solicited.

In short, we find that the Army's failure to include Holiday Inn on the bidders list and the resultant failure to solicit that firm 5 weeks after the firm submitted its SF 129 violated FAR § 14.205-1. See Custom Envtl. Serv., Inc., B-242900, June 18, 1991, 91-1 CPD ¶ 578; Essex Electro Eng'rs, Inc., supra; see also Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Moreover, as the protester is a small business, we think the Army's actions also violated FAR § 19.202-4(c), since the protester properly should have been on the bidders list and, therefore, should have been solicited pursuant to that provision as well. See Davis Enters., supra.

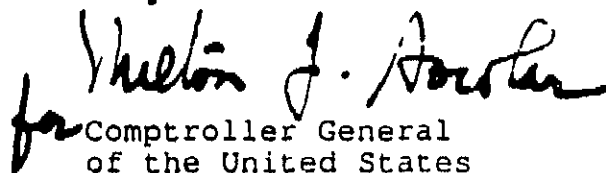
In reaching our conclusion, we are mindful that prospective contractors should avail themselves of every reasonable opportunity to obtain solicitation documents. See Western Roofing Serv., supra. We think that Holiday Inn made all reasonable efforts to obtain the solicitation. Holiday Inn not only submitted the SF 129, but also met with the Fort Meade Chief of Contract Administration over 5 weeks before the issuance of the IFB for this large amount of lodging and meal services and informed him of Holiday Inn's active interest in competing for lodging and meals services.³ As

³There is no suggestion that the Fort Meade office issues more than a handful of solicitations for these type of services and, therefore, no reason to believe that the Chief of Contract Administration should have been unaware of the pending solicitation when he met with Holiday Inn's representative. Furthermore, while the agency asserts that the announcement board had a notice of the IFB, the Holiday Inn representative asserts that she saw no such notice, even though she visited the contracting office regularly and checked this announcement board.

indicated above, Holiday Inn was told at that time that it would be included on mailing lists once it submitted the SF 129. Although the Army suggests that the protester should have been aware of the IFB because this procurement was announced in the CBD in December 1991, Holiday Inn timely and properly requested inclusion on the bidders list well prior to the issuance of the IFB, and we think it could reasonably expect that it would be provided subsequently issued solicitations for these services and did not have to refer to previously issued CBD announcements. See Davis Enters., supra; Abel Converting Inc. v. United States, 679 F. Supp. 1133 (D.D.C. 1988).

We recommend that the contract award be terminated and the requirement for these services be resolicited. Holiday Inn is also entitled to its costs of pursuing the protest.
4 C.F.R. § 21.6(d)(1) (1992).

The protest is sustained.


for Comptroller General
of the United States