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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-191061

**DATE:** April 27, 1978

**MATTER OF:** Reliable Elevator Corp.

**DIGEST:**

1. Where protester was omitted from bidders' list, procurement was not synopsisized in Commerce Business Daily, and protester was told, or at least led to believe, that it was on bidders' list, protest filed after bid opening but within 10 working days after protester first became aware that procurement was advertised is timely.
2. Where protester was omitted from bidders' list, procurement was not synopsisized in Commerce Business Daily as a result of inadvertence, and only one bid was received, award need not be disturbed since there was significant effort to obtain competition, a reasonably priced bid was received and there was no deliberate attempt to exclude the protester.
3. Price reasonableness is matter within discretion of contracting officer and GAO will not interfere absent showing of abuse of discretion. Award to bidder at price of \$1,490 per month which was \$590 per month greater than what protester claimed to be reasonable price, alone, does not constitute showing of abuse of discretion.
4. GAO does not review protests against affirmative determinations of responsibility by contracting officials except for reasons not applicable in this case.

Reliable Elevator Corp. (Reliable) protests the award of a contract to Advance Elevator, Inc. (Advance), pursuant to invitation for bids (IFB No. 691-27-78, for maintenance of elevators and dumbwaiters at Veterans Administration (VA) Wadsworth Hospital Center, Los Angeles, California. The term of the contract was from December 1, 1977, through September 30, 1978, with two

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1-year option periods. Only one bid, in the amount of \$34,900, was received and since the contracting officials determined that adequate competition was solicited and a reasonable price received, award was made to the sole bidder.

The IFB, a total small business set-aside, was issued on November 1, 1977, with a scheduled bid opening of November 28, 1977. A list of 11 firms, not including Reliable, was supplied to the VA by the Small Business Administration, with the notation "The following small business firms are competent to bid on your elevator maintenance requirements and service same, if successful bidder," and these firms were mailed copies of the IFB. In addition, notice of this IFB was publicized in post offices in Los Angeles, Beverly Hills and Santa Monica, California. Prior to this time, Reliable states that it "took special steps [submission of Bidders' Mailing List Application, followup letters and telephone calls] to make sure that if this job was going out to bid that we [Reliable] would be invited to bid this job." Further, Reliable states that it was told by an unidentified person on November 18 "that it looked as though the job would not go out to bid."

Essentially, Reliable protests the fact that it was not solicited to compete for the referenced procurement. In addition, Reliable questions the capability of the firms supplied by the SBA, alleging that two of the firms have never serviced an elevator in Southern California and three others do not exist in Southern California as elevator service companies. Then, in a blanket statement, Reliable alleges that none of the 11 firms have ever serviced the type of elevators listed in the procurement (U.S. Elevator Gearless MDU Control Elevator). Subsequently, Reliable specifically asked how Advance was determined to be responsible.

Reliable expresses doubt that a reasonable price was obtained by the VA and states that "a reasonable price to service these eleven units would be \$2900.00 per month." Moreover, Reliable questions the fact that the VA failed to publish notification of the procurement in the Commerce Business Daily (CBD) and

the fact that only one bid was received by the VA. Reliable requests that the contract be set aside and the procurement resolicited or, in the alternative, that the contract not be extended, pursuant to the Renewal Option Provision, beyond September 30, 1978.

Advance contends that Reliable's protest is untimely pursuant to our Bid Protest Procedures (Procedures), 4 C.F.R. § 20.2(b)(1) (1977), since omission from the approved bidders' list was an impropriety "discoverable prior to the bid date" and, therefore, "shall be protested prior to bid opening." We do not agree. Section 20.2(b)(1) provides that "protests based upon alleged improprieties \* \* \* which are apparent prior to bid opening \* \* \* shall be filed prior to bid opening \* \* \*." (Emphasis supplied.) The record indicates that Reliable was told, or at least led to believe, that it was on the bidders' list for this procurement and, as such, it would be reasonable for Reliable to assume that, having failed to receive an IFB, the procurement had not been solicited by the VA. We note that once Reliable became aware (December 27, 1977) of the fact that an award had been made, a protest was filed with our Office. Accordingly, it is our view that Reliable's protest is timely pursuant to our Procedures, 4 C.F.R. § 20.2(b)(2), which provide that a "protest shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

The VA, in reviewing the matter, determined that Reliable had not been solicited due to an inadvertence on the part of the agency and that the procurement had not been synopsisized in the CBD as required by Federal Procurement Regulations (FPR) § 1-1.10C3-2 (1964 ed. amend. 150). However, it is the VA's opinion that such inadvertent agency action and failure to synopsisize in the CBD do not constitute a legal basis for disturbing the award to Advance.

Generally, the propriety of a particular procurement must be determined from the Government's point of view on the basis of whether adequate competition and a reasonable price were obtained, not upon whether every prospective bidder was afforded an opportunity

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to bid. 50 Comp. Gen. 565, 571 (1971). In the absence of probative evidence of a conscious or deliberate intent to impede the participation of a prospective bidder, the failure to receive a copy of the solicitation must be viewed as an inadvertence which generally does not provide a basis to cancel an invitation. 49 Comp. Gen. 707, 709 (1970).

The requirement that there be adequate competition normally is satisfied if competitive bids are received. However, we are aware of no legal requirement that no less than two bids must be received to permit a contract award. In our opinion there may be sufficient justification for award to the only bidder if there is a significant effort to obtain competition (Cf. DeWitt Transfer and Storage Company, B-186235, March 26, 1975, 75-1 CPD 180), a reasonably priced bid is received and there is no deliberate attempt to exclude a particular firm. Culligan Incorporated, Cincinnati, Ohio, 56 Comp. Gen. 1011 (1977), 77-2 CPD 242.

The record indicates that the contracting officer made the award determination pursuant to 41 C.F.R. § 8-2.407-50 (1977) which provides:

"When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination will be made in writing and included on or attached to the abstract of bids."

On the abstract of bids, pursuant to 41 C.F.R., supra, the contracting officer stated that Advance's price was reasonable and adequate competition was solicited.

Basically, the determination of price reasonableness is one of business judgment requiring the exercise of broad discretion. Falcon Rule Company Akron Rule Corporation, B-187024, November 16, 1976, 76-2 CPD 418. Therefore, our Office will not interfere absent

a showing of a clear abuse of discretion. Falcon Rule Company Akron Rule Corporation, supra. The \$590 per month difference between Advance's bid and what Reliable claims is a reasonable price, alone, does not constitute a showing of abuse of discretion on the contracting officer's part. See Kaiser Aerospace & Electronics Corporation, B-189326, August 2, 1977, 77-2 CPD 73; and Hawthorn Melody, Inc., B-190211, November 23, 1977, 77-2 CPD 406.

With respect to the VA's failure to synopsise the procurement in the CBD, the record does not indicate that the failure was purposefully meant to preclude Reliable from bidding and, therefore, we must assume it was an inadvertence on the part of the VA. Furthermore, this failure, in light of the VA soliciting all of the firms provided by the SBA and then publishing notice of the procurement in the above-mentioned post offices, does not indicate lack of a significant effort to obtain competition. Consequently, under the circumstances of this case, the VA's failure to synopsise does not provide a legal basis for disturbing the award. See Coastal Services, Inc., B-182858, April 22, 1975, 75-1 CPD 250. However, we are recommending that future procurements strictly adhere to the FPR synopsis requirement, supra.

Concerning the questioning of Advance's responsibility, it is our policy not to review protests concerning affirmative determinations of responsibility, absent, as here, an allegation or demonstration of fraud on the part of contracting officials or other circumstances not applicable here. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. As to the raising of the responsibility of the remaining firms on the SBA list, since they did not submit bids, this issue is not appropriate for our review.

In view of the foregoing, Reliable's protest is denied in part and dismissed in part.

*R. J. K. 11/14*  
Deputy Comptroller General  
of the United States



M. Hordell PL I

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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April 27, 1978

The Honorable Max Cleland  
Administrator of Veterans Affairs  
Veterans Administration

Dear Mr. Cleland:

Reference is made to a letter to our Office dated February 17, 1978, from the Director, Supply Service, which reported on the protest of Reliable Elevator Corp., concerning the award of a contract under invitation for bids No. 691-27-78, issued at the Veterans Administration (VA) Wadsworth Hospital Center, Los Angeles, California.

Enclosed is a copy of our decision of today. While the protest has been denied in part and dismissed in part, we wish to call your attention to that portion of the decision which concerns the VA's failure to synopsize the subject procurement in the Commerce Business Daily contrary to Federal Procurement Regulations § 1-1.1003-2 (1964 ed. amend. 150). We suggest that this information be brought to the attention of the procurement personnel involved with a view towards attempting to preclude a repetition of similar difficulties in future procurements.

Sincerely yours,

*R. F. K. 11/11/78*  
Deputy Comptroller General  
of the United States

Enclosure