

PL II

DECISION



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

10,428

FILE: B-194612

DATE: June 12, 1979

MATTER OF: Check Mate Industries, Inc.

*CN 67 81146 f
[Protest of Agency Failure To Solicit Bid From Incumbent
Contractor]*

DIGEST:

1. Unintentional actions of agency which preclude protester (incumbent contractor) from competing on procurement do not constitute compelling reason to resolicit since adequate competition was generated, prices were not shown to be unreasonable, and there was no evidence that such actions were result of deliberate or conscious attempt to preclude protester from competing.
2. Failure of agency to synopsisize procurement in Commerce Business Daily does not provide compelling reason to resolicit procurement unless sufficient competition has not been generated or there is proof that failure to synopsisize was purposely meant to preclude protester from competing.

AGC00378

Check Mate Industries, Inc. (Check Mate), protests any award under invitation for bids (IFB) No. DLA100-79-B-0501, issued by the Defense Logistics Agency (DLA) on March 22, 1979. The solicitation involved the purchase of belt buckles. The grounds for Check Mate's protest are that DLA did not solicit a bid from Check Mate, the incumbent contractor, and that the proposed procurement was not published in the Commerce Business Daily. Check Mate wishes to have the IFB cancelled and resolicited. In addition, Check Mate requests that our Office stop any award of a contract prior to our rendering a decision.

Regarding the request that we stop award prior to final resolution of this protest, our protest procedures do not provide for such relief and it is not our practice to do so. Tymshare, Inc., B-186858, January 23, 1978, 78-1 CPD 56. The proper forum for seeking injunctive relief is the Federal courts. Id.

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Proceeding to the merits of Check Mate's protest, we deny the protest for the following reasons. We have held that unintentional actions of an agency which result in a potential supplier being precluded from competing on a procurement do not in themselves constitute a compelling reason to cancel the solicitation and resolicit where adequate competition was generated, reasonable prices were obtained, and no deliberate or conscious attempt was made to preclude any potential bidder from competing. This is so even though the potential supplier is an incumbent contractor. U.S. Air Tool Co., Inc., B-192401, October 30, 1978, 78-2 CPD 307.

There ~~have been~~ ^{were} no allegations of an intentional attempt by DLA to preclude ~~Check Mate~~ ^{the protester} from competing in this procurement. DLA reports that it put a bid package addressed to Check Mate in the mail, and cannot explain the failure of Check Mate to receive it. As regards the notice in Commerce Business Daily, the report contains a copy of a letter to the Commerce Business Daily dated March 14, 1979 (30 days before bid opening on April 11, 1979), which contains a synopsis of the subject procurement. DLA reports that it questioned Commerce Business Daily personnel as to why the synopsis had not been published, and was told that the omission was probably due to a clerical error.

Based on the record before us, we believe that ~~the~~ failure of Check Mate to receive a bid package and the omission of the announcement from the Commerce Business Daily ~~were~~ not the result of deliberate or conscious attempts by DLA to preclude ~~Check Mate~~ ^{the protester} from competing. Further, the contracting officer reports that DLA received two bids, from which he has determined that there was adequate competition and that reasonable prices were obtained. Although the protester questions whether two bids constitute "adequate competition," we do not believe it has been shown that the contracting officer abused his discretion in this regard. In fact, we have held that award may be made to the only bidder where one bid was submitted, if the bid offered a reasonable price

and the agency had made no deliberate attempt to exclude a particular firm. Culligan Inc., Cincinnati, Ohio, 56 Comp. Gen. 1011, 1013 (1977), 77-2 CPD 242. ^{the independent contractor} Therefore, the omission of Check Mate from the subject procurement ~~does~~ not require a resolicitation. See U.S. Air Tool Co., Inc., supra.

The protest ^{is} denied.

Deputy

R. Z. K. H.
Comptroller General
of the United States