



Decision

PR

Matter of: Trauma Service Group

File: B-245923

Date: January 9, 1992

Joseph F. Nowoslowski, M.D., for the protester.
James F. Trickett, for the agency.
James W. Vickers, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest by the incumbent contractor that it improperly was excluded from the competition because it did not receive a copy of the solicitation is denied where the solicitation was synopsisized in the Commerce Business Daily; the protester was included in the agency's bidders mailing list, which shows that the solicitation and its amendments were mailed to the firm; there is no evidence that the agency deliberately excluded the protester; and the agency received five bids and made award at a reasonable price.
2. Company that did not enter the competition for a contract is not an interested party to protest the acceptability of the low bid of the five bids received.

DECISION

Trauma Service Group (TSG) protests the award of a contract to Coastal Government Services, Inc., under invitation for bids (IFB) No. 246-91-B-0028, issued by the Indian Health Service, Department of Health and Human Services, for emergency room medical services. TSG, the incumbent contractor for the services, complains that the agency prevented TSG from competing by failing to provide it with a copy of the solicitation and to properly synopsisize the requirement in the Commerce Business Daily. TSG further argues that the awardee, Coastal, was under suspension at the time of the award, and that Coastal has hired some of TSG's employees at a lower salary than they were receiving from TSG in violation of Federal Acquisition Regulation (FAR) provisions.

We deny the protest in part and we dismiss it in part.

Under the Competition in Contracting Act of 1984, agencies are required, when procuring services or property, to obtain full and open competition through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (1988) ✓ An agency generally meets that obligation if it makes a diligent and good faith effort to comply with the statutory and regulatory requirements regarding notice and distribution of solicitation materials. Kenner Mfg. Co., B-225435, Feb. 24, 1987, 87-1 CPD ¶ 208. ✓

We see no basis to recommend resolicitation here. The agency has submitted its Bidders Mailing List for the procurement, which lists 24 firms, including TSG, that were sent the IFB and the two amendments that were issued. Next to each of the 24 firm names, including TSG's, are checkmarks and dates indicating when the IFB and amendments were sent to the firms; it appears from the record that TSG's mailings were handled in the same manner as were the other 23 firms'.

Regarding TSG's allegation of failure to synopsize the IFB in the Commerce Business Daily, the IFB in fact was publicized in the June 7, 1991, issue. The notice contained the solicitation number and a bid opening date of July 31, and stated the solicitation would be issued on or about July 1. Later, in the August 8 issue of the Commerce Business Daily, the bid opening date was changed to September 11 and the issuance date to August 12. We find nothing deficient or otherwise improper regarding these notices.

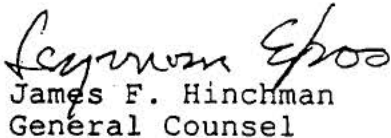
Finally, the Indian Health Service received five timely bids in response to the IFB and awarded the contract to the low bidder. We have no reason to question the reasonableness of the award price.

In view of the above, TSG's alleged failure to receive a copy of the IFB provides our Office no basis on which to disturb the award.

With respect to the remainder of the protest, TSG is not an interested party to protest the acceptability of Coastal's bid, since one of the actual competitors, not TSG, would be in line for award if TSG were right. See 4 C.F.R. §§ 21.011, 21.111 (1991). ✓ In any event, the agency, in its report on the protest, states that Coastal was not on the List of Debarred, Suspended or Ineligible Contractors. Further, TSG's argument that Coastal's bid should be rejected because Coastal proposed to employ several physicians at wages lower than they were receiving from TSG is based on FAR § 52.222-46, "Evaluation of Compensation for Professional Employees." ✓ That clause requires an agency, in conducting a negotiated procurement, to consider the soundness of the offeror's

management plan and understanding of the contract work when the offeror proposes to pay professional employees less than did the predecessor contractor. The contract in issue here, however, was let by sealed bidding. In a sealed bid procurement, a prospective contractor's ability to meet its obligations if awarded the contract involves the firm's responsibility. See FAR subpart 9.1. The contracting officer in this case found Coastal responsible; our Office does not review such an affirmative determination except in limited circumstances not involved here. 4 C.F.R. § 21.3(m)(5).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel