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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Gadsden Moving & Storage Co., Inc.
File: B-250658
Date: February 11, 1993

Rene Greene for the protester.
Gerald P. Kohns, Esq., and Joseph H. Doyle, Esq., Department
of the Army, for the agency.
Henry R. Wray, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency deprived protester of opportunity to compete because agency did not timely provide it with a copy of solicitation amendment establishing bid opening date is sustained where record shows that agency used incorrect mailing address for protester, protester took reasonable steps to obtain amendment, and agency received only one bid.

DECISION

Gadsden Moving & Storage Co., Inc. (Gadsden) protests the bid opening under invitation for bids (IFB) No. DABT02-92-B-0020, issued by the Directorate of Contracting, Fort McClellan, Alabama, for packing and crating services. Gadsden contends that the agency's error in misaddressing its copy of a solicitation amendment which announced the bid opening date deprived Gadsden of the opportunity to bid and thereby eliminated it from the competition.

We sustain the protest.

The IFB was issued on July 17, 1992, with an original bid opening date of August 18. The IFB bid schedule called for various items of moving and related services under three schedules within each of two areas of performance. Schedule I of each area covered outbound moves; schedule II covered inbound moves; and schedule III covered intra-city moves. The IFB also provided estimates of minimum and maximum daily requirements and allowed additional awards if necessary to meet the stated maximum estimated daily requirements.

Nine firms were solicited through the bidders mailing list. A pre-bid conference was conducted on July 27, which was attended by representatives of Gadsden and one other firm.

On August 12 the agency issued Amendment No. 0001 to the solicitation, which postponed the bid opening date to September 1 in order to respond to questions raised at the pre-bid conference. Amendment No. 0002, issued on August 26, responded to the questions but extended the bid opening indefinitely pending receipt of a revised Department of Labor wage determination. The agency issued Amendment No. 0003 on September 4. This amendment answered another prospective bidder question, which had been posed by Gadsden, incorporated the revised wage determination, and established a bid opening date of September 17 at 2:00 p.m. Only one bid was submitted in response to the IFB. That bid offered to meet the stated maximum daily requirements for all the items listed in the IFB bid schedule.

Gadsden states that it had bid on the work covered by prior versions of this contract for many years and had been awarded parts of the work almost every year. It is the incumbent contractor for portions of this work. Gadsden maintains that, while it received the IFB and the first two amendments, it did not receive Amendment No. 0003 prior to bid opening.¹ Gadsden contacted the agency at least twice after the bid opening date was indefinitely extended in late August and expressed concern that it had not received notice of a new date. An agency representative replied that the contract was a low priority because performance would not begin until January 1993.

According to Gadsden, when it called on September 18 the agency told it that bid opening had occurred the day before. On September 18 Gadsden filed a protest with the agency, alleging that it had not received Amendment No. 0003. The agency denied the protest on September 29, stating that "[t]here is no evidence Amendment 0003 was not mailed to your firm in that the amendment in question was prepared and mailed in accordance with usual office procedures."

After receiving the protest denial, Gadsden re-examined the materials it had received from the agency and discovered that the envelope containing the IFB had been addressed to it at "2713 West Meighan Boulevard" in Gadsden, Alabama, rather than its correct address of 2713 East Meighan Boulevard. Gadsden states that it then contacted the individual residing at 2713 West Meighan, who said that she has in the past received mail incorrectly addressed to

¹Gadsden states that it eventually received Amendment No. 0003 on October 14. The postmark on the envelope containing the amendment shows that it was mailed at the time the amendment was issued, but the envelope does not indicate what happened between the date it was mailed and the date it was received.

Gadsden and has returned the mail to the Postal Service. A Postal Service representative informed Gadsden that such mail is returned to the sender.

In response to Gadsden's protest to our Office, the agency reports that its standard procedure is to process the mailing of all solicitation amendments using mailing labels produced from its automated "SAACONS System." It concedes that Gadsden's address was incorrectly listed in the system, and therefore on the mailing label, as West Meighan Boulevard. However, it states that the incorrect address had been on the SAACONS System since August 1990. The agency states that it has no evidence of any correspondence misaddressed to Gadsden being returned to the agency during this period.

The agency argues that a potential bidder bears the risk of not receiving IFB amendments unless it is shown that the agency clearly failed to follow bid document notice and distribution requirements. According to the agency, even when incorrect addresses are used, the bidder retains the risk of non-receipt so long as the agency obtains adequate competition and reasonable prices and there is no evidence that the bidder was deliberately excluded from the competition. The agency further maintains that Gadsden was on notice of the mailing label error for 2 years and failed to object or seek a correction. In fact, the agency contends that Gadsden's protest should be dismissed as untimely on this basis. Finally, the agency maintains that, although only one bid was received on all items, it obtained adequate competition in this case.

Gadsden responds that it supplied the agency with its correct address, and that its address is shown correctly on the solicitation documents themselves and on past contract payments from the agency. Therefore, it had no reason to be aware of the mailing label problem until after it failed to receive Amendment No. 0003.

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 this requirement 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. See, e.g., Custom Environmental Service, Inc., 70 Comp. Gen. 563 (1991), 91-1 CPD ¶ 578. In pursuit of these goals, it is a contracting agency's affirmative obligation to use reasonable methods, as prescribed by the Federal Acquisition Regulation (FAR), for the dissemination of solicitation documents, including amendments, to prospective competitors. This affirmative obligation is particularly significant in

the case of an incumbent contractor. See Abel Converting, Inc. v. United States, 679 F. Supp. 1133 (D.D.C. 1988); Kilmer Guard & Patrol, Inc., B-248920, Oct. 1, 1992, 92-2 CPD ¶ 220; Professional Ambulance Inc., B-248474, Sep. 1, 1992, 92-2 CPD ¶ 145. FAR § 14.208 specifically requires all prospective contractors who have been furnished IFBs to be furnished copies of the amendments to the IFB.

Concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of reasonable opportunities to obtain solicitation documents. Custom Environmental Service, Inc., *supra*. While potential bidders generally bear the risk of non-receipt of solicitation amendments, this is not the case where there is evidence (beyond mere non-receipt) establishing that the agency failed to comply with the FAR requirements for notice and distribution of amendments, and where the potential bidder has not neglected reasonable opportunities to obtain the documents. Phillip Sitz Construction, B-245941, Jan. 22, 1992, 92-1 CPD ¶ 101, and cases cited.

In this case, we believe that the agency must bear responsibility for Gadsden's failure to receive Amendment No. 0003. The agency concedes that it made a mistake when entering Gadsden's address into its automated system, which generated the mailing labels. There is nothing in the record to contradict the protester's assertion that it did not receive the amendment until after bid opening and the agency's error, while undoubtedly inadvertent, apparently resulted in a failure to provide Gadsden with a solicitation amendment on a timely basis as required by FAR § 14.208.

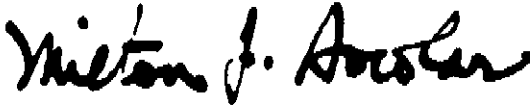
Further, we disagree with the agency's argument that it obtained adequate competition. An incumbent contractor, Gadsden, did not bid, and only one firm ultimately submitted a bid. Our Office and the courts have found recompitation warranted in circumstances less extreme than these. See Abel Converting, Inc. v. United States, *supra*; Professional Ambulance Inc., *supra*; Republic Floors, Inc., 70 Comp. Gen. 567, 570 (1991), 91-1 CPD ¶ 579. For example, the court in Abel rejected the contention that two bids for certain solicitation items provided adequate competition, holding:

"When so few bidders participate in a solicitation, the absence of even one responsible bidder significantly diminishes the level of competition. This is particularly so when the absent bidder is the incumbent contractor since that contractor previously submitted the lowest bids." 679 F. Supp. at 1141.

In a recent decision, Kimber Guard & Patrol, Inc., *supra*, we specifically rejected an agency's contention that receipt of only one bid amounted to adequate competition. We pointed out in Kimber that, in addition to limiting competition, an agency effectively eliminates a benchmark against which to judge the reasonableness of current prices when an incumbent contractor is prevented from competing.

Accordingly, because of the agency's mailing error and the fact that only one bid was received, we find that the CICA requirement for full and open competition was not met. The protest is sustained.

We recommend that the agency resolicit the procurement, giving the protester the opportunity to compete. The award should then be made to the low, responsive, and responsible bidder. We also find that Gadsden is entitled to be reimbursed its protest costs in accordance with 4 C.F.R. § 21.6(d)(1) (1992).


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