



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Aluminum Specialties, Inc. t/a Hercules Fence Company

**File:** B-281024

**Date:** November 20, 1998

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David A. Hearne, Esq., Outland, Gray, O'Keefe and Hubbard, for the protester.  
George N. Brezna, Esq., Patrick J. Coll, Esq., and Vicki E. O'Keefe, Esq., Department  
of the Navy, for the agency.

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GAO, participated in the preparation of the decision.

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## DIGEST

Where contracting agency synopsisized intention to issue competitive solicitation in Commerce Business Daily, directly contacted firms that had bid under predecessor solicitation (including incumbent protester) regarding their interest in receiving solicitation package, advertised solicitation on local contracting office bulletin board and thereafter mailed solicitation package to protester's correct address, protester bears risk of nonreceipt of solicitation.

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## DECISION

Aluminum Specialties, Inc. t/a Hercules Fence Company (Hercules) protests the award of five contracts to Hurricane Fence Company under invitation for bids (IFB) No. N00187-97-B-6863 issued by the Department of the Navy, Navy Public Works Center (PWC) Norfolk for chain link fencing repair, replacement, and installation for various locations of the Navy PWC. Hercules, the incumbent contractor for three of the contracts, asserts that the requirement was inadequately advertised and that the sole bid received was unreasonably priced.

We deny the protest.

On June 5, 1998, the agency posted a Commerce Business Daily (CBD) synopsis announcing its intention to issue a competitive solicitation on July 6 for the award of five separate requirements contracts to provide fence installation and repair services at five different locations. CBD Notice, June 5, 1998. On August 4, the agency advertised the solicitation by posting a notice on the bulletin board outside of the PWC Norfolk contracts department office. Seven firms responded to the CBD announcement to request copies of the solicitation, and were placed on the bidders' mailing list. The agency also contacted six other firms that had submitted bids for the current contracts, including the protester, to ascertain whether they were interested in receiving the solicitation package. Unsworn Declaration of

Contract Specialist, Oct. 5, 1998, at 1. All six firms expressed interest and were added to the mailing list. The agency reports that it mailed the solicitation materials to the 13 firms on the mailing list, including Hercules, on August 4. Additionally, on August 13, another firm, Beamon Enterprises, picked up a copy of the solicitation at the PWC Norfolk contracts department. Agency Report at 1. The mailing address for Hercules as it appears on the mailing list is 1526 Early Street, Norfolk, Virginia, 23502, which is the correct address for the company. At the September 4 bid opening, Hurricane's bid, which included each of the five sites, was the only one received. On September 11, Hercules filed this protest with our Office, and PWC Norfolk has stayed the procurement pending a decision by our Office.

Hercules contends that the agency did not adequately advertise the solicitation because it failed to advertise in local sources as it had done in the past. The protester asserts that as a result of the agency's failure to advertise in local sources, two local firms that have historically submitted bids on this procurement (one being Hercules) were not made aware of the solicitation this year.

An agency meets the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1994), mandate for full and open competition when it makes a diligent good-faith effort to comply with the statutory and regulatory requirements regarding notice of the procurement and distribution of solicitation materials, and it obtains a reasonable price. Ervin and Assocs., Inc., B-278849, Mar. 23, 1998, 98-1 CPD ¶ 92 at 2-3; The Maxima Corp., B-234019, Apr. 7, 1989, 89-1 CPD ¶ 363 at 5.

In this regard, Federal Acquisition Regulation (FAR) § 5.101(a)(1) generally requires contracting agencies to publish in the CBD a synopsis of each contract action expected to exceed \$25,000, as is the case here. Further, FAR §§ 14.205-1(b), (c) require contracting agencies to include on applicable solicitation mailing lists any firm that requests a solicitation document. The agency met these requirements and took all reasonable steps necessary to ensure that Hercules was notified of the procurement. While the agency previously may have published solicitation notices in local newspapers as is permissible under FAR 5.101(b)(3), (4), it was not required to provide such notice, and the failure to do so does not, by itself, reasonably evidence an intention to exclude Hercules or any other local contractor from participating in the competition. In fact, FAR 5.101(b)(4)(i) provides that the Contracting Officer may place paid advertising only when it is anticipated that effective competition cannot be obtained otherwise. Publication of a synopsis in the CBD constitutes constructive notice of a solicitation and its contents to all firms, including Hercules. Uniform Rental Serv., B-228293, Dec. 9, 1987, 87-2 CPD ¶ 571 at 2.

Here, the agency not only announced its intention to issue a competitive solicitation in the CBD, it also placed the solicitation announcement on the bulletin board outside of the local contracts office. Further, the agency contract specialist states that she contacted Hercules and five other firms that had previously bid on the

requirements to see if they were interested in receiving the solicitation package. The contract specialist also states that she added Hercules to the mailing list when Hercules expressed interest in bidding. The mailing list contains the protester's name and current address, and the contract specialist states that a copy of the solicitation was sent to Hercules. Unsworn Declaration, supra, at 1-2. The mailing list also contains the names and addresses of several other local firms. In its comments, the protester does not dispute any of these representations; instead Hercules merely states that it has no record of being contacted by the agency and notes that if the agency did mail the solicitation, "it was not received by [Hercules] administrative personnel engaged in the bidding process in time for Hercules . . . to submit a bid." Protester Comments at 2, n.1. Additionally, in view of the expressions of interest received, the Contracting Officer could reasonably anticipate effective competition.

A firm bears the risk of not receiving solicitation materials unless it is shown that the contracting agency made a deliberate effort to prevent the firm from competing, or that, even if not deliberate, the agency failed to provide the solicitation materials after the firm availed itself of every reasonable opportunity to obtain them. Chem-Fab Corp., B-277795, Oct. 27, 1997, 97-2 CPD ¶ 120 at 3; Crown Management Servs., Inc., B-232431.4, Apr. 20, 1989, 89-1 CPD ¶ 393 at 2. Here, there is no allegation or evidence that the agency deliberately attempted to exclude Hercules from participating in the procurement. On the contrary, as outlined above, the agency took reasonable steps to include Hercules in the procurement process, by inquiring into its interest in bidding and mailing the solicitation package to Hercules. The agency's actions here in providing notice of the procurement and distributing the solicitation are unexceptionable; the agency is not a guarantor that the solicitation will be received in every instance. Chem-Fab Corp., supra, at 3-4.

Initially, the protester argued that the sole bid received did not provide reasonable prices because it exceeded the government estimate for four of the five requirements. The agency reported, and the protester now concedes, that Hurricane's prices are lower than the government estimate for all but the Norfolk site, where Hurricane's price is only \$64,250.93 higher than the government estimate of \$2,131,568.47. In its comments on the agency report, the protester asserts that the lack of local participation in the competition by itself calls into question the price reasonableness of Hurricane's bid regardless of comparison with the government estimates because local contractors generally enjoy some price advantages.

The contracting officer determined that Hurricane's prices are reasonable based on comparison with the government estimate because Hurricane's prices were below the government estimate for four of the five sites and only slightly higher for the fifth site. Unsworn Declaration of Contracting Officer, Oct. 6, 1998, at 1. A determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment which we will not question

unless it is clearly unreasonable or there is a showing of fraud or bad faith. Nomura Enter., Inc., B-271215, May 24, 1996, 96-1 CPD ¶ 253 at 2. An agency properly may rely on government estimates alone in determining whether prices are fair and reasonable, Pipe Inc., B-236461, Dec. 7, 1989, 89-2 CPD ¶ 526 at 2, and the fact that only one bid is received does not call into question this determination. Mil-Base Indus., B-218015, Apr. 12, 1985, 85-1 CPD ¶ 421 at 7. Hurricane's prices were below the government estimate for four of the five sites and only 3 percent higher for the fifth site. This comparison of the sole bid received adequately supports the reasonableness of the prices, and the record provides no meaningful basis to question the agency's price reasonableness determination.

The protest is denied.

Comptroller General  
of the United States