

DECISION



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

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FILE: B-194658

DATE: July 26, 1979

MATTER OF: Mid-America Food Service, Inc. DL602272

[Protest of Not Receiving Solicitation Despite Being Incumbent Contractor]

DIGEST:

- 1. Where protester (incumbent contractor) was not solicited, bids need not be rejected since there is no evidence of deliberate or conscious attempt to preclude protester from bidding and protester does not question reasonableness of bids or whether significant effort was made to obtain competition.
- 2. GAO does not conduct investigations as part of bid protest function for purpose of establishing validity of speculative allegations; <sup>rather than the</sup> protester has burden of proving <sup>speculative</sup> allegations. *The protest was denied*

*The protester* Mid-America Food Service, Inc. (Mid-America), protested the proposed award of a <sup>purchase</sup> contract to another firm by the Department of the Army, Fort Leavenworth, Kansas, under invitation for bids (IFB) No. DABT19 79 B 0020. *DL602273*  
 Mid-America <sup>The protester</sup> contended that its firm was not solicited for the food service contract despite the fact that it <sup>was the incumbent</sup> provided hot meals to the *contractor.* Armed Forces Examining and Entrance Station (AFEES) since June 1, 1978. *DL600848*  
 Mid-America argued that an award of a contract, as presently solicited, would not be in the best interest of the Government and would violate fundamental principles of fairness to the incumbent contractor. Mid-America further states that it has an "established history of superior service at a competitive price" on the present contract. Mid-America requests resolicitation of the IFB so that it can submit a bid on the subject procurement.

The IFB was issued on March 7, 1979, and bid opening was scheduled for April 6. On April 10 an Army representative contacted Mid-America and inquired why it had not

submitted a bid for the food service contract since AFEES had been satisfied with its past performance. By reason of this phone call Mid-America learned that bids had been issued but it had not received any notice of this. Mid-America subsequently contacted the contracting officer and learned that the bids had been opened and that preparations for awarding the contract were being made. The Army reports that all six firms on the Bidder's Mailing List were solicited and the requirement was synopsised in the Commerce Business Daily (CBD). Three firms not on the mailing list requested copies of the solicitation. The Army further reports that Mid-America never was on the mailing list. It appears that Mid-America received the previous solicitation, under which it was the successful bidder, from a third party. In any event the Army is revising its mailing list procedures so that all firms participating in a procurement will be added thereto.

Three bids were received. The lowest price offered was \$2.50 per meal. Mid-America's current contract price is \$2.58 per meal.

We have held in numerous decisions that where adequate competition resulted in reasonable prices and where there was no deliberate or conscious intent on the part of the procuring agency to preclude a bidder from competing, bids need not be rejected solely because a bidder (even the incumbent contractor) did not receive a copy of the IFB. Wichita Beverage, Inc., d/b/a/ Pepsi-Cola and Seven-Up Bottling Company, B-191205, July 6, 1978, 78-2 CPD 11. Our Office has also held that adequate competition is normally obtained when competitive bids have been received. Reliable Elevator Corp., B-191061, April 27, 1978, 78-1 CPD 330.


Mid-American argues that it should be afforded relief similar to that sanctioned in Scott Graphics, Incorporated; Photomedia Corporation (Scott), B-183274, May 19, 1975, 75-1 CPD 302, and in Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry (Plattsburgh), B-180380, July 15, 1974, 74-2 CPD 27. We disagree, since both decisions are clearly distinguishable on

the facts from the instant protest. In Scott not only was the incumbent not on the mailing list, but the procurement was never synopsisized in the CBD. Moreover, there were only a small number of manufacturers capable of making the required micro-photographic duplicating films and in previous procurements the low bid usually came from one of those manufacturers. Further, one of the limited number of manufacturers was not solicited. We concluded that there was merit in the agency's contention that the cumulative effect of the above factors had tainted the competition. Consequently we interposed no objection to the agency's decision to cancel and resolicit the requirement. In Plattsburg the agency deliberately failed to furnish the incumbent with a copy of the solicitation. Moreover the requirement was not synopsisized in the CBD. Finally only three sources were solicited. We therefore recommended cancellation and resolicitation of the requirement.

Mid-America has also requested that GAO perform a full investigation of the circumstances surrounding its failure to receive a copy of the solicitation and the reason behind the issuance of the solicitation three to four weeks prior to the time it was previously issued. Unless such an investigation is conducted, Mid-America asserts that it cannot be sure the failure to solicit it was inadvertent.

We do not conduct investigations as part of our bid protest function for the purpose of establishing the validity of a protester's speculative allegations. Mission Economic Development Association, B-182686, August 2, 1976, 76-2 CPD 105. In our view, Mid-America has failed to present the information and evidence necessary to substantiate its speculative assertion that the failure to solicit may have resulted from other than inadvertence. Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States