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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Jess Bruner Fire Suppression

File: B-296533

Date: August 19, 2005

Todd A. Plimpton, Esq., Belanger & Plimpton, for the protester.
Byron W. Waters, Esq., Department of Agriculture, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's posting of a pre-solicitation notice and solicitation conducted under simplified acquisition procedures on the Federal Business Opportunities Internet site did not deprive the protester of an opportunity to compete for a contract for fire engine services to be provided in a particular national forest where the pre-solicitation notice and solicitation were accessible on the Internet site by searching by geographic location.

DECISION

Jess Bruner Fire Suppression protests the award of a contract to any other vendor under request for quotations (RFQ) No. R5SC0605049, issued by the Forest Service, Department of Agriculture, for regional fire engine support. Bruner argues that the agency did not properly post the pre-solicitation notice and solicitation to the Federal Business Opportunities (FedBizOpps) Internet site or specifically solicit Bruner, even though it had previously provided this type of services, thus denying Bruner an opportunity to compete for a contract.

We deny the protest.

The Forest Service has long fought wildland fires using in-house resources as well as those from other federal and state entities. The work required is performed in "forest and rangeland environments with steep terrain where surfaces may be extremely uneven, rocky, covered with thick tangled vegetation," and under extreme temperatures accompanied by smoke and dust. The Forest Service uses wildland fire engines in fighting these fires, which it has obtained in part through private contractors. RFP at 58.

The acquisition here concerns services for the Forest Service's Pacific Southwest region, also referred to by the Forest Service as Region Five or "R-5". Contracting Officer's Statement at 1. Region Five is comprised of five "provinces," with each province consisting of a "group of forests within a geographic area." Id. Specifically, Region Five is comprised of the Sierra Cascade Province, the IBET Province, the Northern Province, the Pacific Southwest Province, and the Southern California Province.

The Forest Service "determined that it would competitively procure" the wildland fire engine services needed by Region Five for the 2005 fire season, and that "[n]eeds for fifteen fire engines in four locations were identified."¹ Id. at 2. The contracting officer for the Sierra Cascade Province was tasked to procure the wildland fire engine services needed for Region Five.² Id. at 4.

On March 23, 2005, a pre-solicitation notice for RFQ No. R5SC0605049 was posted to the FedBizOpps Internet site on the Forest Service's Sierra Cascade Province website within FedBizOpps.³ The notice provided the contracting office address as the "Department of Agriculture, Forest Service, R-5 Sierra Cascade Province (Lassen Plumas and Modoc [National Forests])." The notice stated that the purpose of the acquisition was to obtain the services of two fire engines for the Shasta-Trinity National Forest, three fire engines for the Tahoe National Forest, eight fire engines for the Plumas National Forest, and two fire engines for the Six Rivers National Forest (only the Plumas National Forest is in the Sierra Cascade Province).⁴ The notice continued by stating that the solicitation would only be available electronically, and provided the names and contact information for the designated contracting officer and procurement assistant. The contracting officer also "contacted at meetings and by telephone" all contractors who had active agreements

¹ The wildland fire engine services were previously not competitively acquired, but rather were procured through emergency equipment rental agreements (EERA). Contracting Officer's Statement at 4.

² According to the agency, each province within Region Five, as well as Region Five itself, has its own contracting staff, including its own contracting officer. Agency's Supplemental Comments at 2.

³ FedBizOpps is the government-wide point of entry (GPE) for the electronic publication of notices. Federal Acquisition Regulation (FAR) §§ 5.003, 5.101, 5.201.

⁴ Bruner's protest is focused on the requirement for wildland fire engines for the Tahoe National Forest in the IBET Province. Protest at 2.

with any contracting office within Region Five to provide wildland fire engine services.⁵ Contracting Officer's Statement at 4.

The RFQ for the wildland fire engine services was posted to FedBizOpps on the Forest Service's Sierra Cascade Province website on April 21. The solicitation provided for the award of multiple requirements-type, daily rate contracts with per-day pricing, for a base period of 1 year with two 1-year options. RFQ at 6. The RFQ's schedule of services listed, consistent with the pre-solicitation notice, the previously mentioned four national forests and fire engine requirements for each of the national forests. For example, item number 4 of the schedule set forth the agency's requirement for the Tahoe National Forest as three of a certain type of wildland fire engine, with a mandatory availability period of June 1 through September 30, and required that the fire engines be located within 50 miles of the forest. RFQ at 7. The RFQ further provided that successful contractors would be "responsible for all equipment, materials, supplies, transportation, lodging, trained/certified personnel, and supervision and management of those personnel." RFQ at 58. The RFQ requested that responses to the solicitation be submitted by May 19.

Bruner filed this protest with our Office on June 2, arguing that it was not aware of the existence of the pre-solicitation notice or solicitation until shortly before filing its protest. Protest at 2. The protester contends that the agency erred by posting the pre-solicitation notice and solicitation to FedBizOpps on the Forest Service's Sierra Cascade Province website, arguing that the notice and solicitation should have been posted on either the Forest Service's Region Five website, or on the websites of each of the provinces in which the services were required to be performed (i.e., the Sierra Cascade, IBET, and Northern Provinces' websites). Protest at 3.

In this regard, the record here reflects that the pre-solicitation synopsis and RFQ were accessible only through the Sierra Cascade Province's FedBizOpps website, and could not be accessed through the websites of the IBET Province, Northern Province, or Region Five. As such, a vendor, such as Bruner, who was looking for contracting opportunities in the IBET Province (which includes the Tahoe National Forest) by browsing the IBET Province's website would not have found either the pre-solicitation notice or RFQ at issue here.

⁵ The protester was not contacted because it did not have an active EERA to provide wildland fire engine services within Region Five. Contracting Officer's Statement at 4. The protester, which apparently previously had an EERA covering these services in Region Five, makes a variety of contentions relating to the EERAs and concerning restrictions on its ability to compete for these services, all of which are not germane to the protest of this solicitation and which we will not consider.

Under the Federal Acquisition Streamlining Act of 1994 (FASA), simplified acquisitions are excepted from the general requirement that agencies obtain full and open competition through the use of competitive procedures when conducting acquisitions. See 41 U.S.C. §§ 253(a)(1)(A), (g)(1), (g)(4). Part 13 of the FAR establishes procedures for simplified acquisitions, which are designed to promote economy and efficiency in contracting, and to avoid unnecessary burdens for agencies and contractors. To facilitate these objectives, FASA requires that agencies obtain competition to the maximum extent practicable. 41 U.S.C. § 427(c); FAR § 13.104; Information Ventures, Inc., B-293541, April 9, 2002, 2004 CPD ¶ 81 at 3.

The simplified acquisition procedures require notice of procurements in excess of \$25,000 in accordance with the Small Business Act, 15 U.S.C. § 637(e), and the Office of Federal Procurement Policy Act, 41 U.S.C. § 416 (2000).⁶ A notice must provide an “accurate description” of the property or services to be purchased and must be sufficient to allow a prospective contractor to make an informed business judgment as to whether to request a copy of the solicitation. 15 U.S.C. § 637(f) (2000); Information Ventures, Inc., supra. Additionally, “[a] publication of a notice of solicitation by electronic means meets the requirements for accessibility . . . if the notice is electronically accessible in a form that allows convenient and universal user access” through the GPE. 41 U.S.C. § 416 (a)(7) (2000).

The agency explains that, although the fire engines are needed in three of the Region Five provinces, the pre-solicitation notice and RFQ were posted only to the Sierra Cascade Province website because the contracting officer for that province was tasked with conducting this acquisition, and that contracting officer is authorized to post notices and solicitations only on the Sierra Cascade Province’s FedBizOpps website. The agency concedes that “it was possible for the Forest Service to have posted the [pre-solicitation notice and] RFQ on the FedBizOpps website differently,” but states that this would “have been cumbersome.” Agency Supplemental Comments at 2. The agency also points out that both the pre-solicitation notice and RFQ included the correct North American Industry Classification System (NAICS) code (115310, Natural Resources and Conservation Services) for this acquisition, and that both the pre-solicitation notice and the RFQ could thus have been found by searching the FedBizOpps website using the NAICS code. Id. at 5. The agency also states that the pre-solicitation notice and RFQ were “searchable by . . . geographic criteria,” that is, by searching the FedBizOpps website using the names of the particular national forest for which the wildland fire engines were needed. Id. at 2. The agency concludes that in its view, the pre-solicitation notice and RFQ were properly posted on the FedBizOpps, given that they contained the correct NAICS code and were searchable by specific geographic location.

⁶ Exceptions to the notice requirement are set forth in the regulations, but none are applicable here (nor has the agency asserted that any are applicable). See FAR §§ 13.105, 5.101(a)(1), 5.202.

We first note that the agency has not stated or otherwise explained in any manner why the “process of coordinating with other provinces” was so “cumbersome,” or why that would relieve it of any of its statutory and regulatory obligations regarding the proper posting of procurement actions. In this regard, we note that during a telephone hearing, the basic process of coordinating with the IBET and Northern Province contracting offices was described as nothing more than sending them the pre-solicitation notice and RFQ, and requesting that they be posted on the provinces’ respective websites. Additionally, although the agency is correct that the pre-solicitation notice and RFQ could have been accessed by searching the FedBizOpps site using the correct NAICS code, we note that this code includes many divergent services and postings nationwide; indeed, during the course of a telephone hearing with the parties, such a search was conducted and it yielded well over 900 different postings.⁷ Given the circumstances here, it would be quite burdensome for a contractor to have to regularly search such a large database in order for the contractor to be assured that it remained aware of potential contracting opportunities.

Nevertheless, under the circumstances here, we do not agree with the protester that the agency’s posting of its requirements on only the Sierra Cascade Province’s FedBizOpps website failed to meet the statutory requirement that the notice be “electronically accessible in a form that allows convenient and universal user access.” See 41 U.S.C. § 416 (a)(7) (2000). We have long held that prospective vendors have an affirmative duty to make every reasonable effort to obtain solicitation materials. USA Info. Sys., Inc., B-291488, Dec. 2, 2002, 2002 CPD ¶ 205 at 3; American Material Handling, Inc., B-281261, Jan. 19, 1999, 99-1 CPD ¶ 13 at 2; see Upside Down Prods., B-243308, July 17, 1991, 91-2 CPD ¶ 66 at 3. As noted above, each particular contracting opportunity set forth in the RFQ could have been readily located on the FedBizOpps website by searching by geographic location. That is, the contracting opportunity that the protester is interested in, the provision of wildland fire engine services for the Tahoe National Forest in the IBET Province, could have been readily located by searching the FedBizOpps website for contracting opportunities in that forest—that is, by searching the FedBizOpps website using the term “Tahoe.”⁸ See Protest at 2. Had the protester done this, the protester

⁷ During the hearing, the IBET Province’s website had approximately 60 postings.

⁸ During the telephone conference, a search using the term “Tahoe” yielded about the same number of postings as were listed on the IBET Province’s site.

would have found both the pre-solicitation notice and RFQ. Given this, we conclude that the agency's actions satisfied the legal requirements.

The protest is denied.

Anthony H. Gamboa
General Counsel