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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Allied Materials & Equipment Company, Inc.

File: B-293231

Date: February 5, 2004

Michael I. Goulding, Esq., Centre Law Group, for the protester.
Robert L. Mercadante, Esq., Defense Logistics Agency, for the agency.
Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's failure to post solicitation on FedBizOpps Internet website, as required by regulation, is denied, where protester did not avail itself of every reasonable opportunity to obtain the solicitation; although presolicitation notice indicated an anticipated August 20, 2003 closing time, as that time approached and passed, protester did not contact agency to determine status of solicitation, and finally inquired as to status approximately 7 weeks after closing time.

DECISION

Allied Materials & Equipment Company, Inc. protests the award of a contract by the Defense Logistics Agency (DLA), Defense Supply Center to ILC Dover, Inc., under request for proposals (RFP) No. SP0560-03-R-0186, for chemical-biological filter elements. Allied alleges that the agency's failure to post the solicitation to FedBizOpps, the government-wide point of entry (GPE), as required by the Federal Acquisition Regulation (FAR), improperly denied it the opportunity to compete for the contract.

We deny the protest.

On July 18, 2003, DLA published a synopsis of the proposed RFP on the FedBizOpps website. The notice informed potential offerors that the proposed closing date was August 20, and included contact information for various DLA contracting personnel. Under FAR § 5.102(a)(1), solicitations synopsized on the GPE (i.e., FedBizOpps) must subsequently be posted there as well. Allied states that, following publication of the notice, it began actively monitoring the FedBizOpps and DLA Procurement Gateway websites for the RFP. According to Allied, the RFP was never posted, and

it became concerned with the posting delay when it learned that a new synopsis for the same item had been posted on October 1. Allied contacted the contracting officer on October 7 and inquired as to both the general status of the two solicitations, and whether the new solicitation was intended to replace the earlier solicitation. The contracting officer explained in a brief e-mail that the October 1 solicitation was not meant to replace the earlier solicitation, and that the October 1 solicitation would be available on October 16. Thereafter, by letter dated October 14, Allied again requested information about both solicitations. DLA responded in a letter dated October 31, explaining that the RFP in issue had been posted to DLA's own Procurement Gateway website on August 6, that only one proposal was received by the August 20 closing date, and that award was made to ILC Dover on October 7.

On November 7, Allied filed this protest in our Office, alleging that DLA's failure to post the RFP on FedBizOpps had improperly denied Allied an opportunity to compete. DLA acknowledges that it failed to post the RFP, as required by the FAR. The agency explains that it normally satisfies the FAR requirement by posting a solicitation on DLA's Procurement Gateway website, and then including a web-link to the solicitation with the FedBizOpps synopsis. DLA states that, here, it properly placed the RFP on the Procurement Gateway (the protester denies the RFP was posted on this website), but it failed to include the necessary link on FedBizOpps. Nevertheless, DLA argues that Allied was not prejudiced by its actions, and thus there is no basis for sustaining the protest, since Allied actually received a copy of the RFP before the closing time, as evidenced by a computer printout that the agency claims demonstrates that Allied downloaded the RFP from the Procurement Gateway on August 20. Allied denies that it downloaded the RFP; indeed, it claims that it monitored both FedBizOpps and the Procurement Gateway daily from August 8 until November 7, and that the RFP was never posted to either website.

The Competition in Contracting Act of 1984 generally requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which 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. 10 U.S.C. § 2304(a)(1)(A) (2000); Kendall Healthcare Prods. Co., B-289381, Feb. 19, 2002, 2002 CPD ¶ 42 at 6. In pursuit of these goals, a contracting agency has the affirmative obligation to use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. To that end, FAR § 5.102(a)(1) generally requires that solicitations that are synopsized on the GPE also be available on the GPE. However, concurrent with the agency's obligations in this regard, prospective contractors also must avail themselves of every reasonable opportunity to obtain the solicitation documents. Laboratory Sys. Servs., Inc., B-258883, Feb. 15, 1995, 95-1 CPD ¶ 90 at 2. Where a prospective contractor fails in this duty, we will not sustain its protest challenging the agency's failure to meet its solicitation dissemination obligations. Wind Gap Knitwear, Inc., B-276669, July 10, 1997, 97-2 CPD ¶ 14 at 3. In considering

such situations, we look to see whether the agency or the protester had the last clear opportunity to avoid the protester's being precluded from competing. Id.

We need not resolve the dispute between the parties as to whether Allied downloaded the RFP, since, even accepting Allied's version of the facts as correct, we find that the protester failed to avail itself of every reasonable opportunity to obtain the solicitation.

Allied learned of the solicitation through the July 18 synopsis and, thus, as of that date, was aware of the August 20 anticipated closing time for the receipt of proposals. The protester nevertheless did not contact the agency prior to the closing time to inquire into the status of the solicitation, nor did it contact the agency shortly after the closing time to determine whether the closing time had been changed. Instead, the protester waited approximately 7 weeks after the closing time to inquire into the status of the procurement. This delay was unreasonable. While, as Allied notes, an anticipated closing time in a presolicitation notice may subsequently be extended, it nevertheless serves to establish the rough time frame during which a prospective offeror reasonably should expect to receive the announced solicitation. Prospective offerors cannot ignore the anticipated closing time when they are waiting to receive an announced solicitation—or, it follows, when they are awaiting the posting of a solicitation on a website. Rather, even where a prospective offeror has specifically requested a solicitation, see Wind Gap Knitwear, Inc., supra, as the anticipated closing time approaches and then passes without its receiving the solicitation, the prospective offeror is reasonably expected to stop merely waiting and instead to take steps to actively seek the solicitation. We believe this principle necessarily extends to the circumstances here. While monitoring a website might initially be a reasonable approach to obtaining a solicitation that is to be posted there, we do not think it was reasonable for Allied to continue doing so as the closing time approached and passed, without at least attempting to obtain information as to the status of the procurement; in this regard, as noted above, the synopsis included the names, telephone numbers, fax numbers, and e-mail addresses of both the contract specialist and the commodity business specialist involved with the solicitation.

We conclude that, notwithstanding the agency's error in failing to post the RFP to FedBizOpps, Allied's inability to compete was primarily the result of its failure to fulfill its obligation to avail itself of every reasonable opportunity to obtain the RFP. See Laboratory Sys. Servs., Inc., supra.

The protest is denied.

Anthony H. Gamboa
General Counsel