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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: PR Newswire Association, LLC

File: B-400430

Date: September 26, 2008

Brian Taylor for the protester.

Daniel Selnick, for Business Wire, Inc., an intervenor.

Michael I. Goulding, Esq., Department of Health and Human Services, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency was not required to provide actual notice of solicitation to incumbent contractor; posting of solicitation on FedBizOpps Internet site provided constructive notice to all potential offerors, including protester.

DECISION

PR Newswire Association, LLC protests the award of a contract to Business Wire, Inc. under request for proposals (RFP) No. HHS-ASPA-NEWSDIVISION, issued by the Department of Health and Human Services (HHS) for public relations assistance, including dissemination of news releases, press statements, media advisories and other time-sensitive media materials. PR Newswire asserts that the agency failed to “properly notify” it of the RFP.

We deny the protest.

PR Newswire is HHS’s incumbent public relations assistance contractor and this RFP is the agency’s second effort to obtain follow-on services. In its first attempt, HHS awarded a sole-source contract to PR Newswire. Business Wire challenged the award in a protest to our Office, in response to which the agency took corrective action, including a planned re-examination of its requirements and an agreement to provide Business Wire with a copy of the solicitation. Business Wire withdrew its protest and we closed our file without further action (B-311078, Feb. 5, 2008). HHS then extended PR Newswire’s contract on a month-to-month basis. On May 28, 2008, the RFP was posted on the FedBizOpps website (<http://www.fedbizopps.gov>) with a closing date of June 24. The contracting officer provided notice to Business Wire,

but to no other potential offeror. HHS made award to Business Wire on August 1. After learning of the award, PR Newswire filed this protest.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2000), amended by the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 326, 118 Stat. 1811 (2004). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. Toward this end, our Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f) (2008). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Id. PR Newswire's protest does not meet this standard.

PR Newswire asserts that the agency was required to provide it actual notice of the RFP's issuance. However, it cites no authority for this proposition, and we are aware of none. As noted by the agency, and conceded by the protester (Comments at 1), for proposed contract actions--such as this RFP--in excess of \$25,000, the agency is required to publish a synopsis and solicitation information on the government point of entry (GPE), accessed through FedBizOpps. Federal Acquisition Regulation (FAR) §§ 2.101, 5.101(a) and 5.102; see 41 U.S.C. § 416(a)(7) (2000) (electronic solicitation publication on GPE meets requirements for accessibility of notice). Since FedBizOpps has been expressly designated by statute and regulation as the official public medium for providing notice of contracting actions by federal agencies, and HHS published this solicitation on that website, PR Newswire was on constructive notice of the RFP. See CBMC, Inc., B-295586, Jan. 6, 2005, 2005 CPD ¶ 2 at 2 (FedBizOpps website places prospective contactors on constructive notice of contract awards); Aluminum Specialties, Inc. t/a Hercules Fence Co., B-281024, Nov. 20, 1998, 98-2 CPD ¶ 116 at 2 (notice in Commerce Business Daily (formerly the official public medium for identifying proposed contract actions and now replaced by FedBizOpps) provides constructive notice of solicitation and contents). There is no further requirement that agencies provide actual notice to prospective offerors.¹

¹ The protester's status as the incumbent contractor also had no effect on the agency's notice responsibilities. At one time--but no longer--the FAR required that "bids shall be solicited from . . . the previously successful bidder" or offeror for the requirement. See (superseded) FAR §§ 14.205-4 and 15.403. The current FAR does not require such notice to incumbent contractors; thus, HHS's failure to provide such notice here provides no valid basis for protest.

Our conclusion is not changed by the protester's alleged unsuccessful attempts to obtain solicitation information from agency personnel. In this regard, PR Newswire asserts that, as it performed its contract work, its staff made "repeated inquiries" of HHS News Division personnel about when or if a new solicitation would be issued, but it was never provided any information about the RFP. Protest at 1. However, the protester does not identify any specific HHS employee or dates when it sought that information. In fact, it does not allege that it inquired of anyone in the cognizant contracting office; it states only that it asked news division personnel, none of whom were responsible for issuing solicitations. Motion to Dismiss at 2. Since the protester was not seeking information from the office responsible for the solicitation, and there is no evidence that the agency actively or passively misled it about the RFP, the agency's silence provides no basis for protest. PR Newswire has neither alleged, nor provided evidence of, agency bad faith in this regard.

Likewise, the fact that the agency furnished actual notice to Business Wire provides no valid basis for protest. Again, the agency furnished legally sufficient notice to all potential offerors, and the fact that the agency also provided Business Wire with actual notice pursuant to its proposed corrective action, in response to the earlier protest, did not render that notice inadequate.

The protest is denied.

Gary L. Kepplinger
General Counsel