



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Laboratory Systems Services, Inc.

File: B-258883

Date: February 15, 1995

Leslie B. Walker, Jr. for the protester,
Maj. William R. Medsger and David H. Scott, Esq., Department
of the Army, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest of agency's failure to solicit firm that (by facsimile transmission which the agency reports it did not receive) requested a copy of solicitation in response to a procurement synopsis in the Commerce Business Daily (CBD) is denied where protester's own records show possible problem with transmission and, although the protester knew--as a result of the CBD notice--that the agency estimated a July 21, 1994, closing date, the protester unreasonably delayed contacting the agency about its nonreceipt of the solicitation until almost 3 months after its initial request (which was also 2 weeks after the August 25 closing date); the protester did not avail itself of every reasonable opportunity to obtain the solicitation.

DECISION

Laboratory Systems Services, Inc. (LSS) protests the award of a contract by the Department of the Army to Hewlett Packard Co. (HP) under request for proposals (RFP) No. DAAD05-94-R-0871, for maintenance services for HP laboratory equipment. LSS contends that the award was improper since the Army did not send the protester a copy of the RFP.

We deny the protest.

On June 15, 1994, the current procurement was synopsisized in the Commerce Business Daily (CBD); all interested firms were invited to contact the agency by letter or facsimile to obtain a copy of the solicitation. The CBD notice, which provided an anticipated July 21 closing date, stated that telephone requests for a copy of the RFP were not permitted.

LSS contends that it sent, by facsimile transmission of June 17, a request for the solicitation and attempted several times thereafter to confirm that request by telephone. The agency's contracting personnel for this procurement report that they maintain standard operating procedures for delivery of such communications to the appropriate personnel, but that the facsimile request and telephone messages described by the protester were not received by them.

The RFP was issued on July 25, and mailed to seven firms (not including the protester) that had submitted written requests for the RFP. One proposal, submitted by HP, was received by the August 25 closing date.

On September 6, approximately 3 months after its June 17 facsimile request, the protester sent a facsimile message to the contracting specialist referring to its June 17 facsimile transmission and requesting a copy of the RFP. By letter of September 21, the contracting officer notified LSS that it had received the firm's facsimile request (dated September 6) for a copy of the RFP, but that a copy of the solicitation would not be forwarded to the firm since the solicitation had closed on August 25, and the contract had been awarded. In this letter, the contracting officer also stated that the agency had not received the referenced June 17 facsimile request for a copy of the RFP. This protest followed.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (1988), 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. Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242. 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, Federal Acquisition Regulation (FAR) § 14.205-1 requires contracting agencies to include on applicable solicitation mailing lists any firm that requests a solicitation document. However, concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain solicitation documents. Lewis Jamison Inc. & Assocs., B-252198, June 4, 1993, 93-1 CPD ¶ 433. Where a prospective contractor fails in this duty, we will not sustain the protest even if the agency failed in its solicitation

dissemination obligations. Freedom Elevator Corp., B-256357, June 10, 1994, 94-1 CPD ¶ 361; Lewis Jamison Inc. & Assocs., supra. In considering such situations, we look to see whether the agency or the protester had the last clear opportunity to avoid unreasonably precluding the protester from competing. Id.

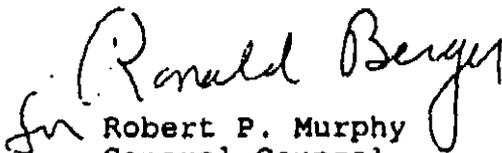
In this case, we conclude that the protester failed to diligently pursue a copy of the solicitation. LSS learned of the RFP from the June 15 CBD notice. This means the protester knew at least the following from that notice: the agency's anticipated closing date for the receipt of proposals (July 21); the name, telephone number, and address of the contract specialist; the scheduled period of performance (from October 1 through September 30, 1995); and the only acceptable means of requesting a copy of the RFP (by written request, by facsimile, or by mail). The CBD notice expressly instructed prospective offerors that telephone requests were not permitted.

The protester has submitted an itemization produced by its facsimile machine of its facsimile transmissions on June 17, which indicates that a transmission was received by facsimile station number "41027784491"--the protester suggests this proves receipt by the agency at the facsimile number published in the CBD notice for requests for a copy of the RFP. The number published in the CBD notice, however, was "410-278-4491." Thus, based on the protester's own evidence, it is not clear that the facsimile at issue was transmitted to the correct location.

In any event, regardless of whether the attempted June 17 facsimile request was received by the agency, the record is clear that, so far as the protester knew, proposals were estimated to be due by July 21, and the protester was not in receipt of a copy of the RFP as that date approached (and, in fact, passed). Although, the protester alleges that it placed several telephone calls to the agency to request the solicitation, but that the calls were not returned (the agency states that it has no record of the protester's calls, nor has the protester submitted any evidence of these calls), the protester knew from the CBD notice that telephone requests would not be honored. Without contacting the agency in writing, as instructed by the CBD notice, before the published anticipated closing date (to again request a copy of the RFP, or at least, inquire about the status of its June 17 facsimile request), the firm had no assurance that it would receive the RFP in time to submit a proposal. The protester failed to contact the agency subsequent to its initial request (in writing, as directed by the agency in the CBD notice) as the published anticipated closing date approached or before the actual August 25 closing date even though LSS was fully aware that

the agency had not honored its June 17 request for the RFP. We conclude, therefore, that LSS failed to fulfill its obligation to avail itself of every reasonable opportunity to obtain the RFP, see Lewis Jamison Inc. & Assocs., supra; the protester had the last clear opportunity to avoid the firm's preclusion from competition under the RFP.¹

The protest is denied.


for Robert P. Murphy
General Counsel

¹The protester also alleges that the agency should have known of its interest based on its prior work. The record does not demonstrate, as LSS contends, that the agency should have known of the firm's ability or interest in the current procurement, or that the agency unreasonably or purposefully excluded the firm from the bidders mailing list.