



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** NuWestern USA Constructors, Inc.

**File:** B-275514

**Date:** February 27, 1997

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Thomas M. Sullivan, Jr., Esq., for the protester.

Albert C. Proctor, Esq., and Barbara Bear, Esq., Department of the Army, for the agency.

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## DIGEST

Agency's issuance of solicitation only in electronic format (CD-ROM) is not unduly restrictive of competition or otherwise inconsistent with applicable law and regulation; nothing in the regulations requires issuance of paper solicitations.

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## DECISION

NuWestern USA Constructors, Inc. (NuWestern) protests the decision of the Department of the Army, Army Corps of Engineers Fort Worth District, to issue request for proposals (RFP) No. DACA63-97-R-0004, to design and construct a warehouse, only in electronic format. NuWestern, a small business, argues that issuance of the solicitation in electronic format only, rather than in addition to paper copies, is unduly restrictive of competition.

We deny the protest.

Prior to issuing the RFP, the Corps participated in a study to determine the feasibility of producing and distributing solicitation documents in electronic format. Representatives from the Air Force, Army, and Navy were asked to develop a process for issuing electronic solicitation packages. To that end, five pilot projects were identified and the electronic format for the distribution of the plans and specifications was initiated. The cost savings for these five projects were significant and, in the judgment of the study group, the use of electronic format to distribute solicitations represented an effective way to reduce the government's cost of operation without restricting competition or imposing a financial hardship on potential bidders or offerors. As a result of its participation in the study, the Corps

decided to issue this solicitation only in electronic format, with proposals to be submitted on paper.<sup>1</sup>

A Commerce Business Daily (CBD) synopsis indicated that the agency intended to issue the solicitation only on CD-ROM; amendments would be issued on floppy disks, CD-ROM, or the Internet. The synopsis further advised that paper copies of the plans and specifications would not be provided and that firms should check the agency's internet address daily for changes to the solicitation.<sup>2</sup> The solicitation was sent on CD-ROM to 63 firms, including the protester. Of the 63 firms that expressed interest in the procurement, the agency reports that 41 are small businesses, six are small disadvantaged businesses, and two are small disadvantaged, woman-owned businesses.

NuWestern argues that use of the electronic format limits competition to those firms that possess the technology required to print the solicitation plans and specifications from the CD-ROM or that have the financial resources to pay a third party for the printing. By not printing the solicitation itself, the protester alleges, the agency unduly restricts competition because it places an undue financial burden on NuWestern and other small businesses and improperly shifts the responsibility for adequacy, completeness and accuracy of the solicitation from the government to potential offerors.

The Competition in Contracting Act of 1984 (CICA) requires contracting agencies to obtain full and open competition, and this is accomplished only where all qualified firms are allowed and encouraged to submit offers on federal procurements and a sufficient number of offers is received to ensure that the government's needs are met at the lowest possible cost. 10 U.S.C. § 2304(a)(1)(A) (1994); Cutter Lumber Prods., B-262223.2, Feb. 9, 1996, 96-1 CPD ¶ 57. Further, the Small Business Act, as amended, 15 U.S.C. § 637b (1994), requires that procuring agencies provide a copy of a solicitation to any small business concern upon request. These statutes contemplate that interested responsible sources will be given a copy of solicitation and the opportunity to compete, and thus do not permit an agency to act in a way that has the effect of unreasonably excluding a concern from competing for an award. Techniarts Eng'g, B-235994, Sept. 28, 1989, 89-2 CPD ¶ 293.

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<sup>1</sup>The agency makes available on the Internet a list of firms that will print solicitations from CD-ROM and the Internet.

<sup>2</sup>Although firms can download or view the solicitation on the Internet, the official copy of the solicitation is provided on CD-ROM.

Federal agencies have traditionally issued their solicitations on paper and furnished paper copies to interested vendors, who then responded with paper proposals. With advances in the information technology field, however, agencies have found that the use of an electronic format, in place of a paper format, can be more efficient and economical. For example, submission of quotation prices on a floppy disk was required in Latins American, Inc., 71 Comp. Gen. 436 (1992), 92-1 CPD ¶ 519, cost spreadsheets were required on disk in D.O.N. Protective Servs., Inc., B-249066, Oct. 23, 1992, 92-2 CPD ¶ 277, and complete cost proposals on a disk were required in W.B. Jolley, 68 Comp. Gen. 443 (1989), 89-1 CPD ¶ 512. Further, in both Continental Airlines, Inc., B-258271, B-258271.4, July 31, 1995, 97-1 CPD ¶ \_\_, and Spectronics Corp., B-260924, July 27, 1995, 95-2 CPD ¶ 47, the agency furnished offerors with certain solicitation-related information on a computer disk, while in Arcy Mfg. Co., Inc., et al., B-261538 et al., Aug. 14, 1995, 95-2 CPD ¶ 283, the agency conducted entire procurements electronically, posting solicitations on its electronic bulletin board and requiring electronic responses only. Moreover, with the enactment of the Federal Acquisition Streamlining Act of 1994, which called for the development and utilization of a federal acquisition computer network, 41 U.S.C. § 426 (1994), Congress clearly signaled its desire that agencies use electronic acquisition methods.

The agency's use of the CD-ROM format here is entirely consistent with this recent history and, from the facts of record, is not unduly restrictive or otherwise inconsistent with the full and open competition standard. Although NuWestern maintains that CICA and the Small Business Act require agencies to provide paper copies of solicitation documents on request, the protester cites no provision of either of those statutes for that proposition,<sup>3</sup> and we are aware of no specific requirement that the agency provide paper copies of the solicitation. Moreover, as noted above, 63 firms, including 41 small businesses, responded to the CBD notice and were provided an official copy of the solicitation on CD-ROM. Thus, the record supports the agency's position that vendors, including small businesses, can compete here. NuWestern and other prospective offerors can print the solicitation with their own equipment or have another company print it from the CD-ROM; we are not persuaded that either method, requiring access to computerized CD-ROM printing equipment or the incurring of a charge for printing, is unduly burdensome.

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<sup>3</sup>Although the protester also argues that various provisions of the Federal Acquisition Regulation (FAR) require agencies to provide paper solicitations, we have reviewed the cited FAR provisions, and we conclude that they include no such requirement. For instance, NuWestern notes that FAR § 11.201 states that contracting officers do not have to provide certain types of specifications "except when . . . [a] prospective contractor requests a copy . . ." Although NuWestern argues that this provision requires agencies to provide paper solicitations upon request, we do not see why an electronic copy would not satisfy the requirement.

See generally Arcy Mfg. Co., Inc. et al., supra (a requirement that responses to small purchase solicitations be submitted electronically was reasonable and not overly burdensome to prospective vendors); W.B. Jolley, supra (requirement to furnish cost proposals on disk not unduly burdensome); and FAR § 5.102(a)(6) (allowing agencies to impose a reasonable fee for solicitation documents). In this regard, as noted above, the agency has publicized the names of firms that can provide the printing services, and the agency reports that these firms have quoted printing prices ranging from \$22.97 to \$29.74 for printing this solicitation, less than the \$34 the agency would have charged offerors for an RFP paper package.

We also find no merit to the protester's contention that the agency has shifted responsibility for the accuracy and completeness of the solicitation to prospective offerors by requiring them to obtain their own paper copies of the solicitation. The CD-ROM contains the official copy of the solicitation plans and specifications, and as the agency concedes, the government is responsible for the accuracy, completeness, and content of the solicitation issued by CD-ROM and for all amendments issued by CD-ROM, floppy disk, or by facsimile. In short, the manner in which the agency issues a solicitation--electronic or paper format--is not material to the government's obligation to issue accurate and complete solicitations.

The protest is denied.

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