



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Neotronics
File: B-223603
Date: September 22, 1986

DIGEST

When protester is on notice, from pre-solicitation notice and Commerce Business Daily synopsis, of the intended dates of issuance and closing of a Federal Supply Schedule solicitation, a protest alleging that the General Services Administration failed to provide it with a requested copy of the solicitation is untimely when it is not filed until a month after the announced closing date.

DECISION

Neotronics, an incumbent Federal Supply Schedule (FSS) contractor, protests the alleged failure of the General Services Administration (GSA) to provide it with a copy of a solicitation for multiple award schedule contracts for 1987-1990. The firm states that, despite its written request, it did not receive a copy of the solicitation, No. FCGS-Y9-37002-N-6-11-86, which covered scientific equipment used to measure, detect, and analyze environmental conditions such as noise and air quality.

We dismiss the protest as untimely.

The record reveals that in January 1986, GSA sent a pre-solicitation notice to all firms on its bidders mailing list for the FSS group at issue here (No. 66, Part II, Section R). The notice stated that a new solicitation would be issued on or about April 15 and would close on or about June 1. GSA asked bidders who wished to participate in the procurement to contact it no later than February 28.

Neotronics responded by letter dated February 3 in which it asked GSA to "please send our copy of the solicitation" to a individual identified as its regional sales manager. Neotronics provided a post office box number in Gainesville, Georgia. On March 20, the procurement was synopsized in the Commerce Business Daily (CBD). In this announcement, GSA listed the date for issuance for the solicitation as on or about May 1, with closing on or about June 10.

Neotronics filed its protest with our Office on July 10, alleging that GSA had deleted its original contact person from the bidders mailing list without notice and that its sales manager had never received the requested "backup" copy of the solicitation. Neotronics seeks to submit a proposal and have it evaluated.

Under our Bid Protest Regulations, protests must be filed--defined as received at our Office--within 10 working days of when the basis for them is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). Here, Neotronics either knew or should have known the intended dates of issuance and closing of the solicitation (the latter actually occurred on June 11). First, the firm clearly received the pre-solicitation notice, since it responded to it. Second, through synopsis in the CBD, it was on constructive notice of these dates and, in fact, of the contents of the entire solicitation. See Lab Methods Corp., B-215526, July 17, 1984, 84-2 CPD ¶ 60.

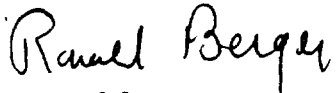
When the firm did not receive a copy of the solicitation shortly after the announced date of issuance, in our opinion it had a duty to contact GSA again; GSA states that it has no record of any inquiry. Moreover, if Neotronics wished to file a protest on this basis, it should have done so at the latest within 10 days of the announced closing date. This would have been June 24. Instead, the firm waited until July 3 to contact GSA by telephone and until July 10 to protest to our Office.

We note that GSA states that it considered Neotronics' letter of February 3 as a request to update its bidders mailing list and to change the name of the individual to whom correspondence was to be addressed. Since Neotronics merely requested "our copy of the solicitation," and did not specifically state that it wanted an additional or backup copy, we think this is a reasonable interpretation. In any event, GSA states, it included Neotronics on the list of 197 bidders to whom it sent copies of the solicitation, using the correct post office box number and zip code.

Since GSA does not obtain return receipts for solicitations that it mails to prospective bidders, we cannot determine at this point whether for some reason Neotronics was omitted from the actual mailing or whether the solicitation was subsequently lost, either by the U.S. Postal Service or by Neotronics after receipt. In view of the untimeliness of the protest, however, we need not pursue this matter or consider

whether there was any improper attempt to exclude an incumbent contractor from the procurement.

Protest dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel