



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Alpha Executive Services, Inc.

**File:** B-246173

**Date:** February 18, 1992

Pamela S. Holdgrafer for the protester,  
Joyce A. Perkins, Department of Agriculture, for the agency.  
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. An incumbent contractor's nonreceipt of a request for quotations under a small purchase procurement, which agency records show was mailed to the contractor, is not cause for overturning the award.
2. Where small purchase request for quotations contains "late proposal" clause an agency reasonably declined to consider a quotation received after the stated quotation due date.

### DECISION

Alpha Executive Services, Inc. protests the award of a contract under request for quotations (RFQ) No. RQ-5241-2-0016, issued by the Department of Agriculture, Farmers Home Administration (FmHA), Indianapolis, Indiana, for the rental of office space in Indianapolis for a hearing officer. Alpha argues FmHA failed to solicit it, even though it was the incumbent contractor.

We deny the protest.

FmHA rented office space for the term October 1, 1990, through September 30, 1991, from Alpha. On September 9, 1991, FmHA sent RFQs under small purchase procedures to prospective sources for the new rental, which was to begin October 1. The RFQ contained a "late proposal" clause, which generally requires the rejection of offers received after the due date. The date for receipt of quotations was September 25. Four quotations were received, but none was received from Alpha.

On September 27, FmHA reviewed the quotations and disqualified two of the four submitted. The two remaining quotations offered acceptable office space. FmHA agreed to rent space from the vendor with the lowest priced quote.

FmHA then called Alpha to inform it that the hearing officer would be vacating Alpha's office space on September 30. Alpha expressed its surprise upon learning that the RFQ for the new lease had been sent because, as Alpha explained, it had not received the RFQ. Alpha offered an oral quotation for the same rate as its 1990-91 lease. FmHA declined to consider Alpha's late quotation. On September 30, FmHA declined to consider a late written quotation from Alpha and authorized the hearing officer to move to the new space.

Alpha argues that it was denied the opportunity to compete because it had not received an RFQ, through no fault of its own. Alpha requests that the new rental contract be terminated and the RFQ be reissued.

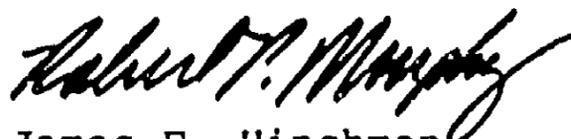
Since this is a small purchase procurement it is excepted from the Competition in Contracting Act of 1984 requirement for full and open competition. 41 U.S.C. §§ 253(a)(1)(A); 253(g) (1988); J. Sledge Janitorial Serv., 70 Comp. Gen. 307 (1991), 91-1 CPD ¶ 225. An agency is to promote efficiency and economy in small purchase procurements by using simplified procedures in soliciting quotations from a reasonable number of qualified sources that will promote competition to the maximum extent practicable. Federal Acquisition Regulation (FAR) § 13.106(b)(1). Generally, a solicitation of three vendors is sufficient. J. Sledge Janitorial Serv., supra; FAR § 13.106(b)(5). It is not sufficient merely to solicit three vendors where another responsible source requests the opportunity to compete--in those circumstances, such sources should be afforded a reasonable opportunity to compete. J. Sledge Janitorial Serv., supra; Gateway Cable Co., 65 Comp. Gen. 854 (1986), 86-2 CPD ¶ 333. The determinative issue in such cases is whether the agency made a deliberate or conscious attempt to preclude the protester from competing, knowing its interest in competing, and if it did so, whether that action was reasonable. J. Sledge Janitorial Serv., supra.

Here, the evidence shows that FmHA attempted to include Alpha in the competition. FmHA states that it sent RFQs to eight sources including Alpha. FmHA submitted a copy of its mailing list for the RFQ, on which Alpha's name and current address appear, as well as a copy of the RFQ addressed to Alpha. There is no evidence, other than Alpha's alleged nonreceipt of the solicitation, that FmHA's mailing

procedures are deficient.<sup>1</sup> Moreover, the record indicates that Alpha, knowing that the rental was expiring, did not contact the cognizant procurement office to ascertain the availability of a solicitation.<sup>2</sup> Based on this evidence, we conclude that FmHA took reasonable steps to include Alpha in the competition and did not deliberately or consciously attempt to exclude Alpha from competing. See Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242. As a general rule, the risk of nonreceipt of solicitation documents rests with the prospective contractor. Id; Ktech Corp., B-240578, Dec. 3, 1990, 90-2 CPD ¶ 447.

Alpha alleges that FmHA should nevertheless have accepted its late quotations once it was apparent that Alpha had not received the solicitation. While small purchase procurements generally do not contain "late proposal" clauses, see Oregon Innovative Prods., B-231767, Aug. 2, 1988, 88-2 CPD ¶ 110, this RFQ did contain such a provision. Thus, FmHA reasonably declined to accept Alpha's late quotes. Compare Access for the Handicapped, 68 Comp. Gen. 432 (1989), 89-1 CPD ¶ 458; Technology Advancement Group, B-238273; B-238358, May 1, 1990, 90-1 CPD ¶ 439.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1</sup>No other vendors complained about not being solicited. Upon Alpha's request, FmHA requested the Post Office to trace the RFQ. The Post Office found no trace of the RFQ and explained that uncertified mail typically cannot be traced.

<sup>2</sup>Prospective contractors generally have a duty to avail themselves of reasonable opportunities to obtain solicitation documents. See Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Although Alpha did discuss the lease with the hearing officer, these contacts were not such reasonable attempts, particularly since the hearing officer assertedly advised Alpha's representative to contact the contracts office. Id.