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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: The Creative Mobility Group, LLC

File: B-410380.2

Date: December 19, 2014

Christina Stowers, for the protester.
Edith M. Bowman, Esq., Department of Veterans Affairs, for the agency.
Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's posting of a solicitation on the Federal Business Opportunities (FBO) website for home medical equipment services, which the incumbent contractor claims was not searchable by using the names of the states in which homes are to be visited, did not deprive protester of obtaining the solicitation where other search terms known to the protester, such as the North American Industry Classification System code and the agency network to be served, properly identified solicitation materials posted on the FBO website.

DECISION

The Creative Mobility Group, LLC protests request for quotations (RFQ) No. VA251-14-Q-0234, issued by the Department of Veterans Affairs (VA) for home medical equipment (HME) services for patients of the Veterans Integrated Service Network 11 (VISN 11) medical facilities in Michigan, Indiana, Ohio and Illinois. The protester contends the agency failed to properly post the solicitation on the Federal Business Opportunities (FBO) website.

We deny the protest.

BACKGROUND

On July 23 the agency issued a pre-solicitation notice on FBO regarding the agency's requirement for providing HME services to patients of the VISN 11 Veterans Affairs Medical Centers and associated Community Based Outpatient Clinics at their residences located throughout Michigan, Indiana, Ohio and Illinois. On August 8, the agency issued the subject RFQ contemplating the award of

multiple contracts for the same requirements identified in the July 23 pre-solicitation notice, with quotes due by August 29. Agency Report (AR) at 2.

Apparently unaware that the solicitation had been issued, and that the time for submission of quotes had passed, the protester, an incumbent contractor providing services to beneficiaries in Michigan, contacted the contracting officer on September 9 requesting the solicitation number, indicating that it could not be found on FBO. The protester's incumbent contract was then set to expire on September 30. Id. The contracting officer informed the protester that the solicitation had already been issued and closed, and that late quotations would not be permitted. Id. On September 17, the firm filed this protest with our Office.

DISCUSSION

The protester alleges that it was unable to find the solicitation on FBO, and therefore was unable to submit a quote, because the agency failed to identify the specific state or states for purposes of the FBO search field corresponding to "place of performance."¹ Protest at 1. According to the protester the agency should have, at a minimum, selected Illinois, Indiana, Michigan, or Ohio as the place of performance since the work is to be performed in each of those states. Protester's Comments at 1. The agency responds that it did not identify a particular state under the FBO place of performance search field because the work was to be performed at patients' residences, which span multiple states. Additionally, notwithstanding the fact that the solicitation may not have been retrievable when conducting a search using the place of performance field, the agency maintains that the published solicitation was easily retrievable using any of several other applicable terms in various other search categories on the FBO website and had the protester reasonably availed itself of such searches, it would have found the solicitation.

The Competition in Contracting Act of 1984 generally requires contracting agencies to obtain full and open competition through the use of competitive procedures, the

¹ A search can be conducted on the FBO website by selecting terms from drop-down menus and/or inserting terms into search boxes. Among the various fields with drop-down choices, a user can search by product and service classification codes, North American Industry Classification System (NAICS) codes, set-aside designations, and place of performance by state. Other search parameters include, for example, active or archived status, and dates. Users can also perform more general searches using key words. Once a search field with a drop-down menu has been selected, the search is limited to procurements identified under that field and selected term. As the agency reports, and discussed further below, the FBO website cautions users that where an agency may not have identified a particular state under the place of performance field, using the place of performance search field can be ineffective.

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. 41 U.S.C. § 253(a)(1)(A) (2006). In pursuit of these goals, a contracting agency must use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them.² Kendall Healthcare Prods. Co., B-289381, Feb. 19, 2002, 2002 CPD ¶ 42 at 6. However, for a protest against an agency's solicitation dissemination to be sustained, a prospective contractor must demonstrate that it availed itself of every reasonable opportunity to obtain the solicitation documents. See Allied Materials & Equip. Co., Inc., B-293231, Feb. 5, 2004, 2004 CPD ¶ 27 at 2-3.

Here, the record confirms that the protester failed to avail itself of every reasonable opportunity to obtain the solicitation. As an initial matter, we note that the protester provides no reasonable basis for its delay in first contacting the contracting officer about the follow-on solicitation just 3 weeks prior to the scheduled expiration of its incumbent contract.³ Further, as explained by the agency above, the record reflects that the solicitation was easily obtainable from FBO using a variety of applicable search terms that reasonably should have been known to the protester. For example, a search by the applicable NAICS code (for home health care services), which code was known to the protester from its prior contract, would have returned the solicitation. Similarly, a search using the VA network to be served (i.e., VISN 11), or the use of other relevant search terms such as home medical equipment or HME, would have resulted in the user's prompt receipt of the published solicitation materials.⁴

² The official public medium for providing notice of contracting actions by federal agencies is the FBO website, which has been designated by statute and regulation as the government-wide point of entry. 15 U.S.C. § 637(e) (2006); 41 U.S.C. § 416; Federal Acquisition Regulation (FAR) §§ 2.101, 5.101(a)(1), 5.201(d); Jess Bruner Fire Suppression, B-296533, Aug. 19, 2005, 2005 CPD ¶ 163 at 4.

³ To the extent the protester generally states for the first time in its comments responding to the agency report that it thought the solicitation was being rewritten based on its employees' communications with unidentified agency staff, the contention, which was not in the firm's initial protest, is untimely. 4 C.F.R. § 21.2(a)(2) (2014). Moreover, the general assertion, without any factual support or information is insufficient to demonstrate the likelihood of the agency's violation of applicable procurement rules. 4 C.F.R. § 21.5(f).

⁴ In its comments filed a month after its protest, the protester provided additional arguments regarding why it could not locate the solicitation using FBO; the firm, however, knew of the solicitation, at the latest, at the time of its initial protest, and thus, these additional arguments are untimely. 4 C.F.R. § 21.2(a)(2). In any event, the protester provides no persuasive evidence to support a conclusion that the agency violated applicable procurement rules. For instance, there is no showing by
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Moreover, to the extent the agency decided not to complete the place of performance field for the solicitation within FBO because the work was to be performed at patients' residences throughout the multistate VISN 11 region, the agency's decision in this regard did not deprive the protester of the ability to reasonably find the solicitation. In reaching this conclusion, we note that the FBO website expressly cautions users about the limitations of searches when the place of performance field is used. Specifically, when the place of performance field is used, FBO includes the following notice:

Please note, there may be opportunities FBO did not recognize by this search. The results returned are based on agency input. If for any reason the submitting agency did not enter the Place of Performance location information, the system will not return that opportunity in the results.

AR at 3; Protest Exh. 5 at 13.

Thus, where the protester failed to heed this warning, and relied on searches using the place of performance field, we have no basis to conclude that the protester was misled by the agency's action, particularly where the record shows there were alternative search categories available to the protester that would have allowed it to promptly retrieve the solicitation.

The protest is denied.

Susan A. Poling
General Counsel

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the protester that changes from the prior solicitation regarding the description of work (i.e. from durable medical equipment to home medical equipment) and the classification code (from "R"-for professional, administrative, and management support services to "Q"-medical services) were improper or unreasonable. Similarly, there is no basis to conclude that the agency failed to comply with Federal Acquisition Regulation notice requirements where the FBO synopsis itself expressly identified the place of performance of the work, or that a response time of fewer than 30 days was inappropriate for the commercial-item procurement. See, e.g., FAR §§ 5.203(b), (c) (providing for a shortened response period for acquisitions of commercial items) and § 5.207(a)(17) (providing that synopses transmitted to FBO must address the place of contract performance).