



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Aqua-Flo, Inc.

File: B-283944

Date: December 30, 1999

Alden L. Coke for the protester.
Marion T. Cordova, Esq., Agricultural Research Service, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly selected vendor that did not quote system specified in synopsis/solicitation is denied where, although no written amendment was issued, agency advised protester that other systems would be considered for award; protester therefore was not prejudiced by absence of written amendment.

DECISION

Aqua-Flo, Inc. protests the selection of Noyes Air Conditioning Contractors under synopsis/solicitation (RFQ) No. 982019283511, issued by the Department of Agriculture, Agricultural Research Service, for a chemical-free water treatment system. Aqua-Flo argues that the selection was improper because Noyes did not offer the Aqua-Flo model number specified in the synopsis/solicitation.

We deny the protest.

The agency conducted the procurement using the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) part 13, since the expected value of the acquisition was under the simplified acquisition threshold. Memorandum of Law at 3. The agency published a combined synopsis/solicitation in the Commerce Business Daily, which specified the Aqua-Flo CT900 system because the agency believed it was the only system that met its needs. Contracting Officer's Statement (COS) at 1. Following publication of the synopsis/solicitation, however, the agency received inquiries from several vendors that were interested in supplying competing systems. Id. On September 8, after reviewing information provided by these vendors, the agency sent Aqua-Flo an e-mail notice advising as follows:

After advertising our need . . . , we have found two other companies that also have a [system which meets our needs]. . . . Because of this, [we will] be hosting a site visit on Wednesday, Sep 15, 1999 After the site visit, quotes will be due Friday, Sep 17, 1999

Id.; Agency Report, attach. 4, E-Mail from Contracting Officer to Aqua-Flo, Sept. 8, 1999. Aqua-Flo and other interested vendors attended the site visit, during which, the agency maintains, it explained its requirements and advised that the system was now being procured on a competitive basis. COS at 1-2. The agency never issued a written amendment setting forth its intention to accept quotes for other than the Aqua-Flo system. Noyes submitted the lowest quotation, for other than the Aqua-Flo system, and was selected.

Aqua-Flo maintains that, since the agency never issued a written amendment permitting quotes on other systems, the agency was precluded from selecting other than the Aqua-Flo system; it concludes that the selection of Noyes for a different system was improper.

As a preliminary matter, we note that the agency properly determined that the competition should be expanded beyond the Aqua-Flo system. In this regard, agencies are required to specify their needs in a manner designed to promote full and open competition and thus may include restrictive requirements only to the extent necessary to satisfy their actual needs. 41 U.S.C. § 253a (1994); Fisons Instruments, Inc., B-261371, July 18, 1995, 95-2 CPD ¶ 31 at 2. Although simplified acquisition procedures are designed to streamline procurements, see Federal Acquisition Regulation (FAR) § 13.002, agencies using these procedures still are required to promote competition to the maximum extent practicable. FAR §§ 13.003(h)(1), 13.104. Given this requirement to maximize competition, once the agency determined that systems other than the specified Aqua-Flo model would meet its needs, it could not properly limit the competition to the Aqua-Flo model. See Ultraviolet Purification Sys., Inc., B-226941, Sept. 10, 1987, 87-2 CPD ¶ 229 at 2-3; FAR § 13.106-1(b)(1) (agency may solicit a single source only where it determines that, under the circumstances of the procurement, only one source is reasonably available). The agency thus properly determined that the competition should be expanded to encompass all systems that would meet its needs.

Turning to the protester's specific argument, while solicitation amendments generally must be issued in writing in order to afford firms an opportunity to respond to changed requirements, we will sustain a protest based on an agency's failure to issue a written amendment only where the failure prejudiced the protester. First St. Invs. Ltd. Partnership, B-270894.2, B-270894.3, Aug. 15, 1996, 96-2 CPD ¶ 69 at 7-8. There was no prejudice here. First, since the September 8 e-mail notice clearly indicated that other systems were found that would meet the agency's needs, and that in light of this fact a site visit was being held, it should have been clear to Aqua-Flo that the agency intended to consider quotes for those other systems. Since Aqua-

Flo thus was on actual notice of the agency's changed requirements, it clearly was not prejudiced by the agency's failure to issue a written amendment before considering competing systems. See NBI, Inc., B-206285.2, Sept. 28, 1982, 82-2 CPD ¶ 290 at 3-4 (protester was not prejudiced by absence of written amendment where it was otherwise on notice of changed requirement). In any case, even if Aqua-Flo were not on notice of the opening of the competition to other systems, Aqua-Flo does not assert, and there is no indication, that it would have altered its quotation to its competitive advantage in response to such notice. We will not sustain a protest absent a showing of such competitive prejudice. The Ensign-Bickford Co., B-275423, Feb. 20, 1997, 97-1 CPD ¶ 93 at 3.

The protest is denied.

Comptroller General
of the United States