

**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

119591

FILE: B-208121

DATE: September 28, 1982

MATTER OF: Technicon Instruments Corporation

**DIGEST:**

Where incumbent contractor was not solicited and there is no evidence of deliberate effort by agency to exclude contractor from competition, and adequate competition was obtained, agency need not rescind the requirement. Moreover, agency may not accept contractor's late proposal.

Technicon Instruments Corporation protests the failure of the General Services Administration (GSA) to send it request for proposals No. FCGS-H-36399-N-3-19-82 for a renewal of the protester's current Federal Supply Schedule (FSS) contract for environmental analysis equipment. GSA concedes that it inadvertently neglected to send Technicon a copy of the RFP when it solicited proposals two months earlier than usual, but states that it received adequate competition. Moreover, GSA points out that the procurement was announced on February 23, 1982 in the Commerce Business Daily (CBD). For the reasons discussed below, this protest is denied.

Technicon contends that for five years it regularly received a request for proposals to renew its FSS contract. When Technicon did not receive the solicitation at the usual time this year, it made repeated unsuccessful attempts to contact the contract administrator beginning on April 8, 1982, but it was not until May 10 that it discovered the solicitation had already been sent and proposals received. Nevertheless, it submitted a proposal on June 28, which was rejected

as late because the closing date for receipt of proposals was March 19. Technicon contends that the CBD announcement was inadequate notice and that it was entitled to a solicitation in the normal course of business. Technicon also asserts its late offer could have been accepted by GSA without prejudice to the other offerors because its existing contract had been extended from July 1 to September 30 and the new contract will not begin until October 1, 1982.

Under the circumstances, we are aware of no basis upon which GSA could have accepted Technicon's late offer under the subject RFP. See SCM Corporation, B-201835, June 3, 1981, 81-1 CPD 442. The extension of the protester's current contract and the delay in awarding the new contract have no bearing on the rules requiring that proposals must be submitted by the closing date on the solicitation. Moreover, it is well established that unless there is evidence of a deliberate effort by the agency to exclude an offeror from participating in the competition, we will not recommend a resolicitation because of an offeror's failure to receive a solicitation if adequate competition is obtained and the agency can make an award at reasonable prices. Balmar Crimp Tool Corp.; Astro Tool Company, B-203917; B-203917.2, September 18, 1981, 81-2 CPD 227. This is true even where, as here, the agency through inadvertence failed to send a solicitation to the incumbent contractor. Ontario Knife Company, B-205142, February 10, 1982, 82-1 CPD 125.

We find no evidence of a conscious or deliberate effort to exclude Technicon from the competition. Moreover, we have been informally advised by GSA that it sent solicitations to those firms on its computerized bidders list and to others from a list maintained by the procuring office. For the two line items for which Technicon submitted a late proposal, GSA received 11 timely offers with respect to one line item and five on the second.

Further, GSA's publication of the synopsis in the CBD on February 23 constituted constructive notice of the procurement to Technicon and all potential offerors. CMI Corporation, B-206349, March 8, 1982, 82-1 CPD 212. If Technicon had read the CBD notice, it would have had sufficient time to obtain the solicitation and respond by the

due date of March 19. One of the obvious purposes of the CBD announcement requirement is to insure that all potential offerors, including those who may have been omitted from the bidders lists, are given adequate notice of opportunities to compete.

While it is indeed unfortunate that GSA did not send the protester a solicitation as it had in the past, under the circumstances, we must conclude that the protest is without merit.

The protest is denied.

*Henry H. L. in Case*  
for  
Comptroller General  
of the United States