



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** U.S. Pollution Control, Inc.

**File:** B-248910

**Date:** October 8, 1992

Larry E. Kleinke for the protester,  
Lou Ann Keenan-Killane, Esq., Defense Logistics Agency, for  
the agency,  
John Formica, Esq., and James A. Spangenberg, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Protester's alleged nonreceipt of an amendment modifying the terms of the solicitation and extending the closing date for receipt of initial offers provides no legal basis to disturb the procurement where the record represents that the agency properly sent the amendment to the protester and did not violate applicable regulations governing the distribution of amendments, and the protester did not avail itself of every reasonable opportunity to obtain the amendment it knew had been issued.

2. Agency is not required to extend the closing date for receipt of proposals because of the protester's asserted nonreceipt of an amendment where the agency complied with applicable regulations regarding the dissemination of amendments, the protester did not avail itself of every reasonable opportunity to obtain the amendment it alleges it did not receive, the protester's request that the RFP's closing date be extended was made only 1 day prior to the closing date, and the record suggests that the protester's inability to submit a proposal in a timely manner apparently stemmed from its involvement in other projects.

### DECISION

U.S. Pollution Control, Inc. (USPCI) protests that it was improperly excluded from competing under request for proposals (RFP) No. DLA200-92-R-0034, issued by the Defense Logistics Agency (DLA) for the removal, disposal, and

management of hazardous waste generated at Bergstrom Air Force Base, Texas. USPCI contends that the agency acted improperly in failing to provide USPCI with amendment No. 0002 to the RFP in a timely manner, and failing to extend the closing date for receipt of initial proposals upon being informed by USPCI that it had not received the amendment.

We deny the protest.

The RFP was issued on April 3, 1992, with a closing date for receipt of initial proposals of May 6. On April 16, the agency held a pre-proposal conference, which was attended by the protester and other prospective offerors. The agency informed the attendees of the conference that amendment No. 0002 to the RFP was forthcoming.

On May 1, DLA issued amendment No. 0002, which among other things, extended the original closing date for receipt of initial proposals to May 20. On May 4, the contracting officer telephoned the attendees of the pre-proposal conference, including USPCI's representative, to inform them that amendment No. 0002 to the RFP had been issued on May 1, and that the amendment had extended the closing date for receipt of initial proposals to May 20.

On May 14, USPCI telephoned the agency, and stated that it had not yet received amendment No. 0002. The contracting officer verified that USPCI was on the agency's Bidders Distribution List (BDL) used to disseminate the RFP and amendments, and that USPCI's mailing address on the list was correct. The contracting officer then offered to transmit what she considered to be the significant portions of amendment No. 0002 to the protester by facsimile, with the amendment being provided to the protester in its entirety by express mail. Portions of the amendment were transmitted to the protester by facsimile on Friday, May 15, with the entire amendment package being sent to USPCI by express mail on Monday, May 18.

On May 18, the contracting officer received a letter from USPCI referencing the RFP, and stating that USPCI was "committed to other projects and will be unable to provide you with the services that you require . . . at this time." The letter thanked the agency for being included on the list of firms from which this type of service was solicited, and asked that it "be apprised of other . . . projects and RFPs that [the agency] will have in the future."

On May 19, the contracting officer was informed by the agency mail room that USPCI's express mail package had been misaddressed. The contracting officer corrected the address

and forwarded the package to USPCI on that day. The contracting officer then telephoned USPCI and explained that the package had been misaddressed. USPCI requested that the closing date be extended because of its failure to receive the amendment in sufficient time to prepare its proposal. This request was denied by the contracting officer. USPCI received the express mail package on the morning of May 20, the closing date for receipt of initial proposals. USPCI did not submit a proposal in response to the solicitation.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with fair and reasonable prices. Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242. In pursuit of these goals, it is a contracting agency's affirmative obligation to use reasonable methods as required by the Federal Acquisition Regulation (FAR) for the dissemination of solicitation documents, including amendments, to prospective competitors. North Santiam Paving Co., B-241062, Jan. 8, 1991, 91-1 CPD ¶ 18; FAR §§ 14.203-1; 14.205; 14.208; 15.403; 15.606(b); 15.611(a).

Concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain solicitation documents. Ktech Corp., B-240578, Dec. 3, 1990, 90-2 CPD ¶ 447; Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. As a general rule, the risk of nonreceipt of an amendment rests with the offeror. Data Express, B-234468, May 25, 1989, 89-1 CPD ¶ 507. Consequently, a prospective offeror's nonreceipt or late receipt of a solicitation amendment, and subsequent elimination as a source from the competition, will not justify overturning a contract award, or if an award has not yet been made, justify the disruption of the procurement, absent evidence that the agency failed to comply with the applicable regulations governing the distribution of amendments. See Western Roofing Serv., supra.

The BDL represents that the amendment was sent to all prospective offerors, including the protester. USPCI was on the BDL with the proper address. Indeed, USPCI apparently received the original solicitation by mail, for which the agency had used the BDL. In the absence of any evidence to the contrary (other than the protester's alleged nonreceipt of the amendment), we find that the agency complied with the FAR requirements regarding the dissemination of solicitation documents, and we presume that the agency in fact sent the

amendment to the protester.<sup>1</sup> See Western Roofing Serv., supra; Shemya Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108; Cascade General, Inc., B-244395, Oct. 17, 1991, 91-2 CPD ¶ 343.

Further, DLA notified the protester on May 4 that it had mailed the amendment on May 1. Yet, the protester did not advise the agency that it had not received the amendment until May 14--10 days after being informed that the amendment had been mailed and 14 days after the date of mailing of which the protester was aware. As such, we believe that USPCI did not fulfill its obligation to avail itself of every reasonable opportunity to obtain the amendment. See North Santiam Paving Co., supra.

The protester nevertheless maintains that the agency acted improperly in not extending the May 20 closing date for receipt of initial proposals, as requested by USPCI, because the agency failed to provide it with a complete copy of the amendment until the morning of May 20. We will object to an agency's determination not to extend the closing date for receipt of proposals only if it is shown to be unreasonable or in violation of law or regulation. See Massa Prods. Corp., B-236892, Jan. 9, 1990, 90-1 CPD ¶ 138; Teledyne Indus., Inc., CME/MEC Divs., B-231020, July 8, 1988, 88-2 CPD ¶ 30; Control Data Corp., B-235737, Oct. 4, 1989, 89-2 CPD ¶ 304.

The contracting officer was informed by the protester that it had decided not to participate in the procurement by letter dated 2 days prior to the solicitation's closing date, and 1 day prior to the protester's May 19 request that the closing date be extended. This letter expressly provided that the protester's decision not to participate in the procurement was based on its "commit[ment] to other projects," and in no way referenced or alluded to the protester's alleged failure to receive an amendment to the solicitation as a factor in its decision. Also, the record contains an agency memorandum documenting a telephone call

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<sup>1</sup>While not raised by USPCI in its protest, the record shows that USPCI also complained in its May 14 telephone conversation with the contracting officer that it had failed to receive amendment No. 0001 to the solicitation. The protester did not mention this in its protest. Amendment No. 0001, which the protester claims it did not receive, provided the time, date, and location of the pre-proposal conference which four of the protester's representatives attended.

with a USFBI representative, where that representative indicated that the press of other business was the reason for USFBI's inability to submit a proposal in response to this RFP."

While an agency may extend a closing date for receipt of proposals in order to enhance competition, see Fort Biscuit Co., B-247319, May 12, 1992, 71 Comp. Gen. \_\_\_, 92-1 CPD ¶ 440, we do not believe that it was required to do so here. As discussed above, DLA complied with the FAR requirements regarding the timely dissemination of solicitation documents. The protester, however, did not avail itself of every reasonable opportunity to obtain the amendment it alleges it did not receive. The protester's request that the RFP's closing date be extended was made only 1 day prior to the closing date, and the record suggests that the protester's inability to submit a proposal by the RFP's closing date stemmed from its involvement in other projects.

In sum, we cannot conclude that the agency violated any regulations in dissemination of the solicitation and its amendments, or acted unreasonably in its refusal to extend the closing date per the protester's request.

The protest is denied.

  
for James F. Hinchman  
General Counsel