

DECISION



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

60593

FILE: B-184690

DATE: March 2, 1976

MATTER OF: C.G.C.I.

98530

DIGEST:

1. Where protest against agency's failure to furnish copy of solicitation is filed with GAO within 10 working days of receipt of notice that copy of solicitation will not be furnished, protest is timely notwithstanding fact that protest is filed after closing date for receipt of proposals.
2. Agency's refusal to furnish prospective offeror with copy of solicitation on grounds none was available is not legally objectionable since agency is not required to prepare unlimited number of solicitations and it appears from record that adequate competition and reasonable prices were obtained and that agency did not seek to deliberately exclude any offeror from competing.
3. Contracting officer's decision to prepare only 16 solicitation packages is not unreasonable where the procurement was to be negotiated on the basis of "public exigency" and where there were 10 names on solicitation list, large number of additional requests were not expected, and time consuming hand correction of drawing for each package was necessary.
4. Where synopsis in Commerce Business Daily indicates that requests for copy of solicitation will be honored if received by agency within 10 days "to extent copies are available," agency's failure to comply with timely request because copies are no longer available does not indicate violation of statute or regulation.

C.G.C.I. has protested the failure of the Department of the Army to furnish it with a copy of request for proposals (RFP) No. DAAG12-76-R-0001 issued on July 14, 1975, by the Pueblo Army Depot, Pueblo, Colorado (Army). C.G.C.I. requests that it be furnished a copy of the RFP and that the original August 1, 1975 closing date for receipt of proposals be extended so that it may submit a proposal.

The record indicates that on July 21, 1975, in response to a July 17, 1975 synopsis of the procurement in the Commerce Business Daily (CBD), the protester telephonically requested a copy of the solicitation. By letter dated July 23, 1975, the Army's contracting officer informed C.G.C.I. that solicitation packages were no longer available. Thereafter, by letter dated July 27, 1975, C.G.C.I. renewed its request, claiming that it was entitled to the package because its telephone request of July 21st was within the 10 day period described in the following note 56 which was referenced in the CBD synopsis:

"56 Requests for copies of this proposed procurement should be received not later than 10 days from the date of publication of this notice in order to facilitate mailing of same to the extent copies are available, directly to the inquirer at time issuance."

When C.G.C.I. did not receive a response from the Army, it protested directly to this Office by letter dated August 4, 1975, and received on August 7, 1975.

At the outset, we must consider the Army's contention that C.G.C.I.'s failure to protest to our Office prior to the August 1, 1975, closing date makes this protest untimely. We do not agree. Section 20.2 of our Bid Protest Procedures, provides in part, that:

"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual on constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *.

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"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of initial proposals shall be filed prior to * * * the closing date for receipt of initial proposals * * *.

"(2) In cases other than those covered in subparagraph (1) bid protests shall be filed not later than 10 days after the basis for protest is known * * *." 40 Fed. Reg. 17979 (1975).

In our view, the protest is not directed against a solicitation defect. Rather, it is directed against the Army's refusal to furnish a copy of the solicitation. The protester became aware of the Army's position when it received the Army's letter of July 23. Since the protest was filed here within 10 working days of July 23, it must be regarded as timely filed.

The record shows that 16 solicitation packages were prepared by the Army for this procurement. The Army reports that this number was chosen for the following reasons:

1. There were 10 potential offerors on the Army's solicitation list and it was determined that this number would be sufficient to insure adequate competition;
2. A large number of additional requests was not anticipated;
3. The preparation of each package required time consuming hand correction of a drawing which was not practical in light of the priority assigned to the procurement, which was to be negotiated under 10 U.S.C. 2304(a)(2) (1970) (public exigency). The protester's request for a copy of the RFP was refused because it was received after all 16 RFP packages had been distributed.

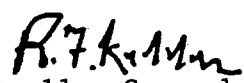
Section 2304(g) of Title 10, United States Code and § 3-100 (1975 ed.) of the Armed Services Procurement Regulation (ASPR) require that in negotiated procurements proposals be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured. See also ASPR §§ 1-300.1 (1975 ed.). However, the requirement for maximum competition does not obligate the Government to prepare unlimited copies of solicitations for prospective offerors. As we said in 50 Comp. Gen. 215, 219 (1970), "* * * the requirement for maximum competition consistent with the nature of the procurement does not require the purchasing activity to solicit an excessive number of prospective contractors. Such a requirement would be costly and burdensome to the Government in the preparation, distribution, and evaluation of proposals." See also Innocept, Incorporated, B-182193, December 24, 1974, 74-2 CPD 377; B-178032, June 26, 1973.

The propriety of this procurement must be determined upon the basis of whether adequate competition and reasonable prices were obtained and whether this was any deliberate attempt

to exclude a particular offeror from the competition, not whether every possible offeror was afforded an opportunity to compete. 50 Comp. Gen. 565, 571 (1971); 34 id. 684 (1955); Preen Building Maintenance Company, B-182914, April 10, 1975, 75-1 CPD 222. In the instant case five proposals were received in response to the RFP, and we see nothing in the record which suggests that adequate competition and reasonable prices were not obtained or that the Army deliberately attempted to exclude C.G.C.I. or any other firm from competing.

With regard to the notice appearing in the CBD, we do not agree that because C.G.C.I. requested a copy of the RFP within 10 days of the CBD notice that the Army's failure to furnish a copy was "* * * a clear violation of the statute and regulations relative to federal procurement." A main purpose of publication in the CBD is to allow concerns not on solicitation lists to prepare and submit a proposal, see ASPR §§ 1-1003.2 (1975 ed.), and ordinarily procuring activities can be expected to prepare a sufficient number of sets so that at least some requests resulting from a CBD synopsis can be honored. However, here it appears that the extra copies of the RFP package were distributed upon request prior to publication of the synopsis in the CBD. Since, as noted above, procuring activities are not required to prepare more than a reasonable number of solicitation packages and since the synopsis indicated that the RFP would be furnished "to the extent copies are available," we perceive no violation of any applicable law or regulation. In this regard, we believe the record adequately supports the reasonableness of the Army's decision to prepare only 16 RFP packages, particularly in view of the public exigency basis of the procurement.

Accordingly, the protest is denied. We note, however, that it would have been more appropriate for the synopsis to reference Note 64 rather than Note 56. Note 64 states that "Availability of the solicitation is limited and will be furnished on a first received, first served basis." See B-178032, supra; Innocept, Incorporated, supra. Furthermore, we note that in addition to the 16 firms receiving a copy of the RFP, another 20 firms requested (but were denied) a copy. It thus appears that there was more competitive interest in this procurement than initially envisioned by the contracting officer. While these circumstances do not affect the validity of the procurement, we would expect that in any subsequent procurements involving similar items a greater number of solicitation packages will be prepared.


Deputy Comptroller General
of the United States