

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

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FILE: B-213921**DATE:** January 19, 1984**MATTER OF:** Instrumentation Laboratory, Inc.**DIGEST:**

1. Unless a late proposal for a Federal Supply Schedule contract falls within one of the exceptions set forth in Federal Procurement Regulations' standard late proposal clause, General Services Administration generally may not consider it. Protester's failure to receive a copy of solicitation does not change the rule when there is adequate competition and no showing that GSA intended to exclude the firm from such competition.
2. Synopsis in the Commerce Business Daily constitutes constructive notice of a solicitation and its contents, so that an incumbent contractor's failure to receive a copy and consequent lack of actual notice of the closing date for receipt of initial proposals does not provide a legal basis for considering its late proposal.
3. In a protest that GAO summarily denies because it is clear from the initial submission that it lacks legal merit, request for a conference will be declined because it would serve no useful purpose.

Instrumentation Laboratory, Inc. protests the fact that it did not receive a copy of a General Services Administration solicitation for a multiple award Federal Supply Schedule contract and consequently missed the December 2, 1983 closing date for receipt of initial proposals. The firm states that it plans to submit a late proposal and requests that our Office instruct GSA to give it full consideration.

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We summarily deny the protest.

According to GSA, the solicitation, No. FGS-P36396-N-12-1-83, was synopsized in the Commerce Business Daily on November 8. Instrumentation Laboratory, however, states that it did not actually learn of the procurement until 5 days after the closing date, i.e., December 7, 1983. An incumbent contractor, the firm wishes to continue to supply items in Group 66, covering multi-test blood gas instruments.

Instrumentation Laboratory argues that other offerors will not be prejudiced by consideration of its late proposal, since it does not know their prices and since awards will be made only after rigorous negotiation. On the other hand, the firm continues, the government will be prejudiced by lack of competition and user agencies may be forced to buy off the schedule if GSA does not consider its proposal. For one particular instrument, the protester alleges, there may be only one offer in addition to its own, creating a sole source situation.

The following background may help explain why, in our opinion, Instrumentation Laboratory's late proposal--when submitted--may not be considered. Under the multiple award Federal Supply Schedule program, GSA awards a number of indefinite quantity contracts for particular product categories. Schedule prices are based on negotiated minimum discounts from commercial prices; agencies select the particular products that meet their needs and order directly from schedule contractors.

Until relatively recently, GSA accepted new offers throughout the term of existing contracts. In a 1979 report, however, our Office found that this practice prevented the agency from comparing and obtaining the most advantageous prices. We therefore recommended that GSA establish firm cutoff dates for proposals submitted in response to Federal Supply Schedule solicitations. See "Ineffective Management of GSA's Multiple Award Schedule Program--a Costly, Serious, and Longstanding Problem," 79-71, May 1, 1979, at 49.

In 1981, in response to our recommendation, GSA adopted Federal Procurement Regulations § 1-3.802.1 (amend. 206, August 1980), concerning late proposals, for use in multiple award Federal Supply Schedule solicitations. The regulation prevents consideration of late proposals unless they are sent by registered or certified mail no less than 5 days before the scheduled closing date or unless they have been mishandled after receipt at the government installation. In short, unless a late proposal falls within one of these exceptions, GSA may no longer consider it. See MacGregor Athletic Products, B-211452, September 23, 1983, 83-2 CPD 366; The 3M Company, B-206317, February 22, 1982, 82-1 CPD 158.

The question therefore becomes whether Instrumentation Laboratory's failure to receive a copy of the solicitation changes the rule. We find that it does not. When there is adequate competition and no showing that the procuring agency intended to preclude a firm from competing, our Office will not disturb an otherwise valid acquisition solely because the protester did not receive a copy of the solicitation. American Radhial Inc., B-212384, August 12, 1983, 83-2 CPD 204.

We find no factual basis for the protester's allegations regarding a potential sole source here, since according to GSA, for each of the five items that Instrumentation Laboratory previously offered to supply, it has received at least three proposals. Instrumentation Laboratory has neither alleged nor shown that GSA intended to exclude it from the competition, and in any case synopsis in the Commerce Business Daily constitutes constructive notice of a solicitation and its contents. Id. Since synopsis occurred here, Instrumentation Laboratory had constructive notice of the December 2, 1983 closing date.

Finally, Instrumentation Laboratory requests a conference to discuss the merits of its protest. In summary denial situations, because it is clear from the initial submission that a protest lacks legal merit, we decline requests for conferences because no useful purpose would be served. Such is the case here.

B-213921

The protest is denied.

for Milton J. Acosta
Comptroller General
of the United States