



Decision

Matter of: Async-Nu Microsystems, Inc.

File: B-417822

Date: October 11, 2019

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

Marie Cochran, Esq., General Services Administration, for the agency.

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DIGEST

Protest that agency contracting official misled protester regarding issuance of solicitation is denied because the information that the protester received was accurate when sent and not misleading, the solicitation was posted on fbo.gov a short time later, and the posting provided constructive notice of its issuance to all prospective offerors.

DECISION

Async-Nu Microsystems, Inc., of Fredericksburg, Virginia, a small business, protests actions taken by agency contracting officials in connection with the issuance of request for proposals (RFP) No. 47QFCA19R0033, issued by the General Services Administration (GSA), Federal Acquisition Service, for commercial-item program management and acquisition support services for GSA's Federal Systems Integration and Management Center (FEDSIM), in Washington, D.C. Async-Nu contends that GSA officials unjustifiably limited competition by misleading the firm about the release of the RFP.

We deny the protest.

BACKGROUND

The background for this protest centers on a series of public electronic postings and communications between Async-Nu and FEDSIM contracting personnel. On January 18, 2019, the contract specialist for this procurement posted a request for information (RFI) on the fbo.gov website, seeking potential sources to provide program, office, and operation management support; acquisition management support; technical

writing support; contract quality control support; graphic design support; data analysis and automation support; and SCIF [special compartmentalized information facility] support. Contract Specialist's Statement at 1.

On April 22, the same contract specialist created a new fbo.gov posting, labeled as a "notice of intent to solicit," which generally described the agency's requirement. Agency Report (AR) Tab 2, FBO.gov Posting (Apr. 22, 2019) at 1. On May 8, the contract specialist added a posting under the April 22 notice that provided information for a site visit. AR Tab 3, FBO.gov Posting (May 8, 2019) at 1. On the morning of May 16, the contract specialist posted another document that was separate from the April 22 Notice, and was labeled as a synopsis. AR Tab 4, FBO.gov Posting (May 16, 2019) at 1 & Tab 5, FBO.gov Posting (May 16, 2019) at 1.

Later on May 16, the contract specialist canceled the synopsis posting. AR Tab 7, FBO.gov Posting (May 16, 2019) at 2. The cancellation entry included a link that led to a new, separate posting that the contract specialist created a short time earlier. Id. at 3. That new posting was labeled as a "consolidated notice" of a requirement for comprehensive operations management, procurement, and administrative support services (COMPASS). AR Tab 6, FBO.gov Posting (May 16, 2019), at 1. At roughly the same time, the contract specialist modified the April 22 notice to add an electronic link to the consolidated notice posting. AR Tab 8, FBO.gov Posting Modification (May 16, 2019), at 1.

On the morning of July 16, the contract specialist received the completed RFP documents, but was awaiting a response from agency officials about whether any last-minute changes were required. Just before noon, the contract specialist responded to an email inquiry from Async-Nu about the status of the solicitation by stating that the RFP "has not yet been released," that it would be released on fbo.gov, that Async-Nu should "continue to monitor the most recent posting," and that the RFP "will be added to that." In a short email response, Async-Nu acknowledged that it would do so. Protest at 2.

That afternoon, after receiving confirmation that the solicitation required no changes, the contract specialist posted the RFP on fbo.gov as an addition to the May 16 consolidated notice. The RFP described the procurement as one "[c]onducted under Federal Acquisition Regulation (FAR) [part] 12 utilizing FAR [part] 15 procedures," and indicated that it was set aside for service-disabled veteran-owned small businesses (SDVOSB). RFP at 1. The RFP posting became visible to the public at 4:44 p.m. (Eastern) on July 16. AR Legal Memorandum at 2; AR Tab 21, RFP Posting Record from fbo.gov, at 1.

The RFP directed prospective offerors to submit proposals in four separate parts. RFP at L-2. The part I proposal was required to be submitted first, and was described as the offeror's "preliminary price proposal." It was to consist of a statement that the firm intended to submit a proposal, a statement of the firm's SDVOSB status, and an acknowledgement of the agency's policy on organizational conflicts of interest. Id.

at L-3 to L-4. A cover letter accompanying the RFP set a due date of July 23 for the part I preliminary price proposals. AR Tab 16, RFP Cover Letter, at 1.¹

More than a dozen firms submitted part I responses. AR Legal Memorandum at 2. Async-Nu did not submit a part I proposal by the July 23 due date. On August 1, the firm sent an email inquiry to the contract specialist, asking for an update on when the RFP would be released. The contract specialist responded that the RFP had been released on fbo.gov, and that the closing time for submission of proposals had passed. Async-Nu then filed this protest.

DISCUSSION

Async-Nu argues that the contract specialist's actions effectively abandoned the first two postings on fbo.gov concerning the agency's requirements and, in combination with the contract specialist's email response to Async-Nu on July 16, misled the firm. Those actions allegedly caused Async-Nu to fail to receive the solicitation and to miss the opportunity to submit a part I proposal. While acknowledging the general principle that prospective offerors are on constructive notice of postings on fbo.gov, the firm argues that the contract specialist's actions here were misleading, that the firm was in fact misled, and therefore the general rule that posting the solicitation on fbo.gov provides constructive notice cannot be applied to Async-Nu.

GSA argues that the contract specialist's July 16 response to Async-Nu's inquiry was accurate and not misleading, that the RFP was posted properly on fbo.gov, and that Async-Nu itself is responsible for failing to monitor and locate the public posting of the RFP on fbo.gov. AR Legal Memorandum at 2-3. GSA contends that offerors are obliged to use "every reasonable opportunity" to obtain a solicitation and that if Async-Nu had done so, it would have obtained the solicitation. Id. at 2. The agency further asserts that the information the contract specialist provided to Async-Nu was accurate because when she stated that it "has not yet been released," it had in fact not been released, and the contract specialist also properly advised the firm to continue to monitor fbo.gov. Id. at 4; AR Tab 18, Email from Contract Specialist to Async-Nu (July 16, 2019) at 1.

As Async-Nu acknowledges, publication of a solicitation using fbo.gov provides constructive notice to all interested sources. Protest at 3. When a protest argues that an agency improperly failed to notify prospective offerors of a solicitation, the protester must demonstrate that it availed itself of every reasonable opportunity to obtain the solicitation. See Creative Mobility Group, LLC, B-410380.2, Dec. 19, 2014, 2014 CPD ¶ 376 at 3.

¹ The price proposal (part II), technical proposal (part III), and materials for oral presentation (part IV) would be due on August 19. Id.

Based on our review of the contemporaneous record, we are not persuaded that the contract specialist's communications with Async-Nu were misleading. The agency's explanation, which is consistent with the contemporaneous documents, shows that the contract specialist did not have final approval to release the RFP when the specialist sent the email response that accurately informed Async-Nu that the RFP had not been released. The contract specialist also accurately urged the firm to continue to monitor fbo.gov. We therefore conclude that the essential reason that Async-Nu failed to obtain the RFP before part I proposals were due was its own failure to take reasonable steps to monitor fbo.gov. Accordingly, Async-Nu has provided no basis to sustain this protest.

The protest is denied.

Thomas H. Armstrong
General Counsel