



Decision

Matter of: Boswell & Dunlap, LLP

File: B-416623

Date: October 10, 2018

Frederick J. Murphy, Jr., Esq., Boswell & Dunlap, LLP, for the protester.
Heather M. Self, Esq., and Caleb A. Pearson, Esq., Department of Agriculture, for the agency.

Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency denied protester an opportunity to compete is dismissed where the agency posted the solicitation on the government-wide point of entry, the FedBizOpps website.
 2. Protest challenging agency's cancellation of a solicitation is dismissed as untimely where the protest was not filed within 10 days of receiving notice of the cancellation.
 3. Protest challenging the establishment of a blanket purchase agreement is dismissed where the protester is not an interested party to challenge the agency's actions.
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DECISION

Boswell & Dunlap, LLP, a small business, located in Bartow, Florida, challenges multiple actions by the U.S. Department of Agriculture relating to request for quotations (RFQ) No. 1231ME-18-Q-0007 (RFQ-0007) and RFQ No. 1231ME-18-Q-0009 (RFQ-0009), which were issued for the provision of foreclosure legal services and related technical support for the State of Florida. The protester alleges that it was denied an opportunity to compete for RFQ-0009, the agency improperly cancelled RFQ-0007, and that establishment of any blanket purchase agreement (BPA) pursuant to RFQ-0009 would be unreasonable.

We dismiss the protest.

The agency issued RFQ-0007 on February 5, 2018, as a small business set-aside pursuant to the commercial items and simplified acquisition procedures contained in

Federal Acquisition Regulation (FAR) parts 12 and 13. RFQ-0007 at 0010¹; Agency Report (AR), Tab 3, RFQ-0007 FedBizOpps Notice, at 0090. The solicitation contemplated the establishment of multiple BPAs on a lowest-priced, technically acceptable basis.² RFQ-0007 at 0042-0043. On February 21, Boswell submitted a quotation in response to the solicitation. Contracting Officer Statement (COS) at 0001.

On May 17, the agency cancelled RFQ-0007 and provided notice to all vendors, including Boswell, via email. AR, Tab 5, Cancellation Notice, at 0116. The cancellation notice provided to Boswell stated: "The above referenced solicitation is being cancelled as further development of requirements and direction may be required to yield a successful outcome for the Government's needs. No additional information is available at this time. Please continue to track the Federal Business Opportunity (FBO) at www.fbo.gov for any future opportunities." Id. After cancellation, the agency amended the minimum qualification requirements under the capabilities and organizational experience element of the technical evaluation factor. COS at 0001.

On June 18, the agency reissued the solicitation as RFQ-0009. AR, Tab 7, RFQ-0009 FedBizOpps Notice, at 0201-0202. This solicitation was posted to FedBizOpps with the same title as RFQ-0007, "Foreclosure Legal Services and Related Technical Support for the State of Florida." Compare AR, Tab 3, RFQ-0007 FedBizOpps Notice, at 0090 with AR, Tab 7, RFQ-0009 FedBizOpps Notice, at 0201. RFQ-0009 closed on July 3; 10 quotations were received in response to solicitation RFQ-0009. COS at 0005.

On July 25, a representative of Boswell contacted the contracting officer for RFQ-0007 to inquire about the status of the solicitation. Protest at 2. According to Boswell, the contracting officer advised that solicitation RFQ-0009 was issued on June 18 and had closed on July 3. Id. The contracting officer then directed Boswell's representative to search the FedBizOpps website for the posting, at which time Boswell located RFQ-0009 in the archived solicitations.³ Id. at 2, 7; COS at 0003.

On July 26, Boswell filed this protest with our Office. Boswell submits three main allegations with respect RFQ-0007 and RFQ-0009: (1) the agency denied the firm an opportunity to compete under RFQ-0009; (2) the agency's cancellation of RFQ-0007 was improper; and (3) any BPA established pursuant to RFQ-0009 was improper. Based on our review of the record, we dismiss the protest as detailed below.

¹ The agency used a Bates numbering system in preparing the agency report. This decision uses the Bates numbers assigned by the agency for its citations.

² The RFQ provided that the BPA would be established on a fixed-price basis with economic price adjustment and some reimbursable line items. RFQ-0007 at 0019.

³ While the parties disagree about specific aspects of the July 25 conversation, we need not address these disputes to resolve the protest.

Boswell first contends that it was denied a fair opportunity to compete for RFQ-0009 because it was never provided a copy of the solicitation and was unable to locate the solicitation on the FedBizOpps website. The protester submits, that in accordance with the agency's cancellation notice, it signed up for automatic updates on the FedBizOpps website and it regularly searched the website using key terms such as: legal services; foreclosure; Florida; Rural Development; and Rural Development/Florida State Office. Protest at 5. Boswell provides that despite its automatic update registration and consistent searches, it never found or viewed the FedBizOpps notice for RFQ-0009. Thus, the protester contends that it was denied an opportunity to compete because it diligently pursued the opportunity through the FedBizOpps website as recommended by the agency.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Boswell's protest does not meet this standard.

FedBizOpps (www.fedbizopps.gov) has been designated as the government point of entry (GPE), "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public." FAR § 2.101. Protesters are charged with constructive notice of the contents of procurement actions published on the FedBizOpps. DBI Waste Sys., Inc., B-400687, B-400687.2, Jan. 12, 2009, 2009 CPD ¶ 15 at 2. The doctrine of constructive notice creates a presumption of notice in law that cannot be rebutted. Worldwide Language Resources, Inc.; SOS Int'l Ltd., B-296984 et al., Nov. 14, 2005, 2005 CPD ¶ 206 at 9, citing, Townsend v. Little and Others, 109 U.S. 504, 511, 3 S. Ct. 357, 27 L. Ed. 1012 (1883) ("constructive notice is defined to be in its nature no more than evidence of notice, the presumption of which is so violent that the court will not even allow of its being controverted"). By definition the doctrine imputes knowledge to a party without regard to the party's actual knowledge of the matter at issue. Worldwide Language Resources, Inc.; SOS Int'l Ltd., supra.

In this regard, our Office has previously found the presumption applies in circumstances where: the protester was the incumbent contractor; the agency provided actual notice to another offeror; the agency previously provided oral notice to the protester on past actions, the protester had no internet access, or the protester simply did not find or see the notice posting. See DBI Waste Sys., Inc., supra (status as incumbent contractor, former oral notice of acquisitions, or lack of internet access is not determinative for notice when solicitation posted on FedBizOpps); PR Newswire Ass'n. LLC, B-400430, Sept. 26, 2008, 2008 CPD ¶ 178 (agency not required to provide actual notice to incumbent even if provided actual notice to another offeror); Specialty Marine, Inc.,

B-292053, May 19, 2003, 2003 CPD ¶ 106 (even if contractor did not see the notice, doctrine of constructive notice applies).

Thus, while Boswell asserts that it registered for FedBizOpps automatic updates and searched the website using certain key terms, whether Boswell had actual knowledge of the RFQ does not impact our analysis.⁴ The record demonstrates that the agency posted notice of issuance of its RFQ-0009 to FedBizOpps on June 18. AR, Tab 7, RFQ-0009 FedBizOpps Notice, at 0201-0202. Thus, Boswell's allegation that it was denied an opportunity to compete does not provide a valid legal basis of protest because Boswell is charged with constructive notice of the contents of the agency's procurement action published on the FedBizOpps website. Accordingly, this protest ground is dismissed.

Boswell also challenges the agency's cancellation of RFQ-0007. The protester alleges that the cancellation was in error and the agency should have awarded the BPAs under RFQ-0007. We dismiss this allegation as untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. A protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, Boswell knew or should have known of its basis of protest on May 17, when it received the agency's notice of cancellation. If the protester believed that the agency's cancellation notice was defective, ambiguous, or otherwise improper, it was required to protest within 10 days of receiving the notice. Because Boswell's protest was not filed within this timeframe, we dismiss this allegation as untimely.

Boswell's final argument asserts that the establishment of any BPA based solely on the quotations received in response to RFQ-0009, without evaluating the quotation submitted by Boswell in response to RFQ-0007, would be unreasonable. We dismiss this protest ground because Boswell is not an interested party to challenge the agency's establishment of any BPAs pursuant to RFQ-0009.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to

⁴ There is no evidence in the record that the agency actively or passively misled Boswell or otherwise acted in bad faith regarding the posting of RFQ-0009; an agency's silence does not provide a basis for protest. PR Newswire Assoc., LLC, supra at 3.

the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id. Since Boswell did not submit a quotation in response to RFQ-0009, the protester lacks the direct economic interest required to maintain a protest challenging the agency's action pursuant to RFQ-0009.

The protest is dismissed.

Thomas H. Armstrong
General Counsel