



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Wilcox Industries Corporation

File: B-287392

Date: April 12, 2001

Robert F. Guarasi for the protester.

Joshua Kranzberg, Esq. U.S. Army Materiel Command, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Allegation that the agency improperly failed to publicize solicitation or award in the Commerce Business Daily (CBD) is denied where the record clearly shows that the acquisition was synopsisized in the CBD Online (CBDNet) and in the printed version of the CBD on two separate occasions, including a notice announcing a change to the solicitation number; the notices advised that the solicitation and related documents could be downloaded from the agency's Internet home page; and the notices provided a link to that site, along with the contracting officer's e-mail address and telephone number, and the protester failed to fulfill its obligation to avail itself of every reasonable opportunity to obtain the solicitation.

DECISION

Wilcox Industries Corporation protests the award of a contract to Insight Technology, Inc. under request for proposals (RFP) No. DAAB07-01-R-N201 (N201), issued by the U.S. Army Communications-Electronic Command (CECOM) for AN/PAQ-4C aiming lights. Wilcox argues that CECOM improperly failed to publicize the solicitation or the award in the Commerce Business Daily (CBD).

We deny the protest.

On June 29, 2000, CECOM initially synopsisized the acquisition for aiming lights and spare parts in the CBD Online (CBDNet) as RFP No. DAAB07-00-R-N204 (N204). Agency Report (AR) Mar. 20, 2001, exh. A.¹ That notice announced that the solicitation and related documents would be available on the “Army Single Face To Industry (ASFI) Interactive Business Opportunities Web Page at <http://abop.monmouth.army.mil>”;² that the estimated closing date would be August 30; and that the solicitation would be issued as a total small business set-aside. *Id.* In addition to referring to the ASFI web page, that CBDNet announcement provided the contracting officer’s (CO) telephone number, together with her e-mail address.

The CO explains that under RFP No. N204, the agency contemplated acquiring the aiming lights as part of a combined acquisition with two other related items. However, as a result of concerns raised by Wilcox, and to further enhance competition, the agency decided to acquire the aiming lights separately. Accordingly, on July 26, the agency published a new CBDNet notice announcing the acquisition for only the aiming lights under RFP No. N204.³ That CBDNet notice announced a revised estimated closing date of September 15. As with the earlier notice, interested parties were referred to the agency’s ASFI web page, and were provided with the CO’s telephone number and her e-mail address.

On November 20, the agency issued a notice on the ASFI website that the solicitation number was being changed from N204 to N201, and concurrently issued the solicitation on the website. AR exh. D. The CO explains that except for the new RFP number (changed because the procurement crossed into a new fiscal year), all other aspects of the procurement remained unchanged. The CO states that RFP No. N201 was not a different acquisition, but only reflected some revisions and corrections made to the solicitation between July and November 2000, primarily as a result of industry comments. The CO further states that any interested party could have learned of the status of the procurement even if it searched the ASFI website using the original RFP number (*i.e.*, N204). CO Statement, Mar. 16, 2001, ¶¶ 6, 7, at 3. In this regard, the CO explains that the ASFI “website technology is such that a search using the old [RFP] number, even after the 20 November 2000 solicitation

¹ The CBDNet notice was followed by a notice in the printed version of the CBD on July 3.

² The agency explains that CECOM and other commands use this website for the electronic exchange of various documents between the government and industry. According to the agency, the website is designed to capture the entire solicitation process, from posting draft documents to electronic signature of contracts.

³ The CBDNet notice was followed by a notice in the printed version of the CBD on July 28.

number change, would lead the prospective offeror to the final version of the solicitation.” Id. ¶ 7.

Wilcox apparently did not access the ASFI website referred to in either CBDNet announcement to keep informed on the status of the procurement, failed to download the solicitation, and failed to submit a proposal in response to the RFP. CECOM awarded the contract to Insight on February 28, 2001. Wilcox subsequently filed this protest in our Office on March 9, 2001.

Under the Competition in Contracting Act of 1984, agencies are generally required to obtain full and open competition through the use of competitive procedures when procuring property or services. 10 U.S.C. § 2305(a)(1) (1994). The dual purpose of this requirement is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. Western Roofing Serv., B-232666.4, Mar. 5, 1991, 91-1 CPD ¶ 242 at 3. In pursuit of these goals, a contracting agency has the affirmative obligation to use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. To that end, Federal Acquisition Regulation § 5.101(a)(1) generally requires contracting agencies to publish in the CBD a synopsis of each contract action expected to exceed \$25,000.

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. Wind Gap Knitwear, Inc., B-276669, July 10, 1997, 97-2 CPD ¶ 14 at 3; Laboratory Sys. Servs., Inc., B-258883, Feb. 15, 1995, 95-1 CPD ¶ 90 at 3-4; Lewis Jamison Inc. & Assocs., B-252198, June 4, 1993, 93-1 CPD ¶ 433 at 4. Where a prospective contractor fails in this duty, we will not sustain the protest even if the agency failed in its solicitation dissemination obligations, and in considering such situations, we look to see whether the agency or the protester had the last clear opportunity to avoid the protester’s being precluded from competing. Wind Gap Knitwear, Inc., supra.

Contrary to the protester’s contentions, we think that the agency used reasonable methods here to disseminate information concerning the status of the procurement and related documents, including the solicitation. The record clearly shows that the acquisition for the aiming lights was initially synopsized in the CBDNet and the CBD as part of the requirements under RFP No. N204. The CBDNet notice advised that the solicitation and related documents could be downloaded from the agency’s ASFI Internet home page, and provided a link to that site, along with the CO’s e-mail address and telephone number. That CBDNet announcement thus provided potential offerors with all of the information they required to keep current on the status of the solicitation, either by reviewing the ASFI website, or by contacting the CO by e-mail or telephone. Wilcox failed to take any of these reasonable steps to keep current on the status of the procurement.

In addition, even if there were some basis to conclude that the agency had failed in its solicitation dissemination obligations, the record shows that Wilcox, not CECOM, had the last clear opportunity to obtain a copy of the solicitation. In this connection, where a contracting agency has synopsisized a proposed procurement in the CBD, a potential contractor is on constructive notice of the solicitation and its contents and has a duty to make reasonable efforts to obtain a copy of the solicitation in order to ensure that it is included in the competition. L&L Oil Co., Inc., B-246560, Mar. 9, 1992, 92-1 CPD ¶ 270 at 2.

Here, as already explained, the acquisition for the aiming lights was initially synopsisized in the CBDNet on June 29 (July 3 in the printed version of the CBD), as part of the agency's requirements under RFP No. N204. Subsequently, the agency published a new CBDNet notice on July 26 (July 28 in the printed CBD), announcing that the aiming lights would be acquired separately under RFP No. N204, with a revised estimated closing date of September 15. Although the RFP was ultimately issued with a new number (N201) several months later, Wilcox knew from the July CBD notices that the solicitation would be issued some time thereafter, with an estimated closing date of September 15. Yet it is apparent that Wilcox never referred to the ASFI website. Had Wilcox done so, it could have easily learned of the solicitation number change, and could have readily downloaded the RFP when it was ultimately issued on November 20.

Wilcox states that in response to an agency market survey of potential sources, it requested that it be included in the agency's "bidder's list" for the aiming lights, and that it be kept abreast of the procurement, implying that the agency failed to do so. We note, however, that Wilcox's response to the agency's market survey is dated April 3, 2000, several months before either of the CBD announcements discussed here were posted, and well before the solicitation was issued. Wilcox has provided no evidence that it tried to contact the agency concerning its request to be included in a "bidder's list," or to inquire as to the status of the solicitation after April 3. In fact, in its comments responding to the Army's dismissal request, Wilcox states that it accessed the ASFI website "only recently" to obtain the information posted on November 20. Protester's Comments, Mar. 27, 2001, at 2. Even assuming that the agency did not include Wilcox on a "bidder's list" for this requirement, as the protester contends, since the record is clear that Wilcox failed either to access the ASFI website at any time prior to closing, or to contact the CO to follow up on the status of the procurement after it responded to the agency's market survey on April 3, Wilcox did not avail itself of every reasonable opportunity to obtain the solicitation.

Based upon our review of the record, we think that the agency met its obligation to use reasonable methods to publicize the procurement, and to timely disseminate information about the status of the solicitation. Further, by not taking reasonable steps to keep itself apprised of the status of the solicitation, Wilcox failed to fulfill its

obligation to avail itself of every reasonable opportunity to obtain the RFP.⁴ See Ervin and Assocs., Inc., B-278849, Mar. 23, 1998, 98-1 CPD ¶ 92 at 4.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ Since Wilcox did not submit a proposal in response to the RFP, Wilcox is not an interested party to challenge the award to Insight, or the agency's alleged failure to publish notice of the award in the CBD. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2000); Valentec Kisco, Inc., B-238359, May 11, 1990, 90-1 CPD ¶ 465 at 3-4.