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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: USA Information Systems, Inc.

File: B-291488

Date: December 2, 2002

David K. Wilson, Esq., Troutman Sanders, for the protester.
William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton, Baker, McMahon & Tolle, for Information Handling Services, Inc., an intervenor.
Clarence D. Long, Esq., Department of the Air Force, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a procurement conducted by electronic commerce, where the solicitation materials were available only on the Internet, protest that it was improper for the agency to post an amendment with a short response time without specifically advising the protester is denied where the record shows that the protester failed to avail itself of every reasonable opportunity to obtain the amendment by either registering for e-mail notification or checking the Internet site, and that this failure was the reason the protester allegedly had insufficient time to protest the solicitation's terms.

DECISION

USA Information Systems, Inc. (USAInfo) protests the manner in which the Department of the Air Force amended the terms of request for quotations (RFQ) No. F16602-02-Q-S9A3, issued to acquire a 1-year Internet-based network subscription service for various military and engineering specifications, instructions, and regulations. USAInfo argues that by posting the amendment online with a short response time, without specifically advising the firm, the agency prevented it from timely protesting the amended solicitation's terms.

We deny the protest.

On September 14, 2002, Barksdale Air Force Base posted a presolicitation notice of this solicitation on the Federal Business Opportunities (FedBizOpps) Internet site at www.eps.gov. The notice stated that no quotations would be accepted for the

requirement because it was being procured on a sole-source basis; the sole-source justification indicated that Information Handling Services, Inc. (IHS) was the only supplier of this service. Sole Source Justification at 1. On September 19, a representative from USAInfo contacted the agency and obtained a copy of the solicitation. The next day, USAInfo's counsel sent an e-mail to the contracting officer objecting to the sole-source procurement and arguing that the RFQ's line items were improperly bundled. USAInfo asked the contracting officer to amend the RFQ to delete all references to IHS's products, unique features and part numbers, and to unbundle the line items.

On September 24, the agency posted RFQ amendment no. 01 to the FedBizOpps Internet site. Among other things, the amendment revised the RFQ to reflect that the procurement was now a full and open competition, changed all line items to read IHS items "or equal," and extended the due date for quotations to Thursday, September 26. On Wednesday, September 25, USAInfo's counsel discussed additional concerns with counsel for the agency, who agreed to extend the due date for quotations and further amend the solicitation. While the parties disagree as to whether agency counsel told USAInfo when the amendment would be issued, USAInfo's counsel states he was told that the agency wanted to make the award by the end of the fiscal year. USAInfo Counsel Affidavit ¶ 4. The end of the fiscal year was Monday, September 30. On Friday, September 27, the agency posted RFQ amendment no. 02 to the FedBizOpps Internet site. The amendment, which deleted references to IHS and its part numbers, established a closing date of noon on Monday, September 30. IHS was the only firm to submit a quotation, and the Air Force awarded the firm a purchase order in the amount of \$37,447.12, effective October 1.

USAInfo filed the instant protest 1 week later. USAInfo states it did not become aware of the existence of the amendment or the new due date for quotations until after the deadline, and argues that the manner in which the agency amended the solicitation--by posting it online on Friday, September 27 and providing for a noon, Monday, September 30 deadline--while not so notifying USAInfo was unreasonable. The protester states that it believes the amended solicitation still "likely does not allow [it] to submit a compliant response," Protest at 2, but that the agency's actions prevented it from filing a timely protest of the solicitation's terms.¹

We agree with the Air Force that it was USAInfo's failure to make every reasonable effort to promptly obtain the amendment that led to its inability to timely file a protest or submit a quotation.

¹ USAInfo has never identified which, if any, of the solicitation's terms it believes are improper.

Prospective offerors have an affirmative duty to make every reasonable effort to obtain solicitation materials. Performance Constr., Inc., B-286192, Oct. 30, 2000, 2000 CPD ¶ 180 at 2; American Handling, Inc., B-281261, Jan. 19, 1999, 99-1 CPD ¶ 13 at 2. A prospective vendor bears the risk of not receiving a solicitation amendment unless it can show that the agency failed to furnish the amendment inadvertently after the firm availed itself of every reasonable opportunity to obtain the amendment, or the agency made a deliberate attempt to exclude the firm from competing. Christolow Fire Prot. Sys., B-286585, Jan. 12, 2001, 2001 CPD ¶ 13 at 2; Sentinel Sec. & Patrol Servs., B-261018, Aug. 9, 1995, 95-2 CPD ¶ 67 at 3. USAInfo has made neither showing.

The record shows that USAInfo did not avail itself of every reasonable opportunity to obtain the amendment. As indicated above, this was an electronic procurement conducted pursuant to Federal Acquisition Regulation (FAR) Subpart 4.5. The FedBizOpps site includes an e-mail notification service that allows vendors to fill out a subscription form in order to receive notices associated with particular procurements. When amendments are issued to posted solicitations, the websites automatically notify registered users of the change by e-mail. The e-mail also contains a link to the location that the user can access to locate and download the amendment. See Lyons Sec. Servs., Inc., B-289974, May 13, 2002, 2002 CPD ¶ 84 at 1-2, n.1. USAInfo did not avail itself of the registration opportunity presented by the FedBizOpps Internet site² and, accordingly, did not receive e-mail notice of amendment No. 02. In addition, despite being on notice of the Air Force's desire to issue the purchase order by the end of the fiscal year--Monday, September 30--USAInfo apparently did not avail itself of the opportunity to check the FedBizOpps web site for the promised amendment until after noon on Monday, September 30.³ USAInfo must bear the risk it assumed in not availing itself of either of these opportunities to obtain the amendment and, in our view, its failure to do so was the reason it allegedly had insufficient time to timely protest the solicitation's terms. See Performance Constr., Inc., *supra*.

There is also no evidence that the agency made a deliberate attempt to exclude USAInfo from competing here. On the contrary, the agency provided USAInfo a copy of the solicitation, carefully considered its objections to the solicitation's terms, and twice amended the solicitation in response to those objections. Among other things, the agency withdrew the sole-source designation to permit USAInfo to compete and eliminated the references to IHS's products in the solicitation. USAInfo's assertion that the agency "may have intentionally precluded" it from

² According to USAInfo, the employee who tracks solicitation changes states that when she was initially on the web site the subscription service was not available. USAInfo acknowledges, however, that the service was available at a later point.

³ USAInfo is silent as to when it actually learned of the amendment.

responding to the solicitation to avoid a protest, Comments at 4, is unsupported and belied by the agency's actions.

USAInfo finally complains that amendment No. 02 did not afford vendors sufficient time to prepare their quotations. In simplified acquisitions such as this one, contracting officers are to establish deadlines that afford suppliers a reasonable opportunity to respond, considering the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency.

FAR §§ 13.003(h)(2), 5.203(b). The decision as to the appropriate preparation time lies within the discretion of the contracting officer. See Crowley Am. Transp., Inc., B-259599.2, June 19, 1995, 95-1 CPD ¶ 277 at 6. Here, while the time allowed for revision after amendment No. 02 was short, the changes made by the amendment were relatively minor, and the protester had advance notice of the agency's intent to issue the purchase order by the end of the fiscal year. Under the circumstances, USAInfo has not demonstrated that the contracting officer abused her discretion in establishing the short timeframe in which to respond to the amendment by either submitting a quotation or filing a protest.

The protest is denied.

Anthony H. Gamboa
General Counsel