



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Performance Construction, Inc.

**File:** B-286192

**Date:** October 30, 2000

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Denver C. Snuffer, Esq., Nelson, Snuffer, Dahle & Poulsen, for the protester.  
Wilson J. Campbell, Esq., and Jeffrey M. Denson, Esq., Department of the Navy, for  
the agency.

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Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

In a procurement conducted by electronic commerce, where the solicitation materials were available only on the Internet, protest that the late delivery of the protester's proposal was caused by the unavailability of the agency's website on the date set for receipt of proposals and by the agency's refusal to delay the proposal closing date is denied, where the protester's failure to make reasonable efforts to promptly obtain the solicitation materials was the paramount cause of the late delivery and the reason that the protester allegedly had insufficient time to prepare its proposal.

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### DECISION

Performance Construction, Inc. protests the rejection of its proposal as late under request for proposals (RFP) No. N44255-00-R-2485, issued by the Naval Facilities Engineering Command on the Internet, for the renovation of family housing at the Keyport Naval Undersea Warfare Center, Washington. Performance contends that the late delivery of its proposal was caused by the inaccessibility of the Navy's Internet site--the only official source for the RFP and its amendments--on the proposal closing date and the Navy's refusal to delay proposal closing when the agency was apprised of the inaccessibility of the Internet site.

We deny the protest.

The RFP was issued on the Internet on May 31, 2000, in accordance with Federal Acquisition Regulation (FAR) § 5.102(a)(7), which provides that "[i]f electronic

commerce is employed in the solicitation process, availability of the solicitation may be limited to the electronic medium.” Offerors were informed that the solicitation, amendments, plans and specifications would be available only through the Internet and that “hard copies (paper) or CD-ROM” would not be provided. <[www.esol.navfac.navy.mil/eSolPub/SolViewPub.cfm](http://www.esol.navfac.navy.mil/eSolPub/SolViewPub.cfm)>. Offerors were also invited, but were not required, to register for the solicitation at the website; registered offerors were advised that courtesy e-mails would notify registered firms of solicitation amendments posted to the Internet.<sup>1</sup> Offerors were also cautioned that it was the offeror’s responsibility to check the website daily for amendments or other notices. The RFP included the standard “Instructions to Offerors--Competitive Acquisition” clause, FAR § 52.215-1, which provides, in pertinent part, that late proposals would not be considered for award.

The RFP was amended six times before the revised time set for receipt of proposals (2 p.m., local time, July 28). Of particular relevance here, amendment No. 6, issued July 18, 10 days before the revised proposal closing date, made several material changes to the solicitation, including the scope of work to be performed.

Performance states that, on July 28, its president and job site office manager spoke with the Navy’s contract specialist for this solicitation and informed her that the Internet site was inaccessible and therefore Performance could not timely obtain amendment No. 6, which left Performance with insufficient time to prepare its proposal. Protest at 2; Comments at 1; Affidavit of Protester’s President. The time for delivery of proposals was not extended, and Performance hand-delivered its proposal on July 28, at 2:53 pm, after the time set for receipt of proposals. The Navy rejected Performance’s proposal as late. The Navy received seven other proposals by the closing time for receipt of proposals.

The protester complains that the Navy should have excused Performance’s late delivery of its proposal because of the alleged inaccessibility of the Navy’s website on the proposal closing date.<sup>2</sup> Performance asserts that the inaccessibility of the website on July 28 left the protester with insufficient time to obtain amendment No. 6 to change the content of its proposal and to acknowledge. Performance also contends that the Navy should have extended the closing time for receipt of proposals when the agency learned that Performance was having problems accessing the website.

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<sup>1</sup> Offerors were, however, able to obtain the RFP, amendments, and plans/specifications from the website without registering.

<sup>2</sup> Performance does not state the length of time that it alleges the website was inaccessible on July 28 or whether the website was inaccessible on any other date.

The Navy responds that its actions were not the paramount cause of Performance's late delivery of its proposal, but that Performance's failure to attempt to obtain the solicitation amendment until the date set for receipt of proposals was the primary cause of the late delivery. The Navy provided statements from its contract specialist and Internet system administrator, which show that Performance did not register for this solicitation and thus was not e-mailed notices of solicitation amendments, and that the website was operating throughout the period of July 18-28 and was "not down" on July 28. Statements of Contract Specialist and IT Coordinator. In addition, the Navy provided a portion of its website log for the morning of July 28 until the 2 p.m. time for receipt of proposals, consisting of 540 pages of single-spaced lines, each line showing an individual Internet access to the site on that date.

We agree with the Navy that it was Performance's failure to make reasonable efforts to promptly obtain the solicitation amendment that is the paramount cause of the late delivery of its proposal. Prospective offerors have an affirmative duty to make every reasonable effort to obtain solicitation materials. American Material Handling, Inc., B-281261, Jan. 19, 1999, 99-1 CPD ¶ 13 at 2. Here, Performance did not avail itself of the registration opportunity presented by the Navy's website and accordingly did not receive e-mail notice of amendment No. 6. Also, Performance apparently did not check the Navy's website after July 18 and prior to the closing date for receipt of proposals to determine whether the solicitation had been amended.<sup>3</sup> Performance has not demonstrated that the website was not reasonably available to offerors to timely obtain amendment No. 6. Even if we assume that the website was unavailable on the date set for receipt of proposals, awaiting that date to attempt to obtain the solicitation amendment does not satisfy Performance's obligation to make every reasonable effort to obtain solicitation materials.

Accordingly, we find reasonable the agency's decision not to extend the proposal closing date to allow Performance additional time to prepare its proposal. See American Material Handling, Inc., *supra*, at 3 (agency properly refused to extend quotation due date where the protester only requested necessary information for the preparation of its quotation on the due date and the late delivery of the protester's quote was due to protester's failure to reasonably attempt to obtain this necessary information); Latins American, Inc., B-247674, June 15, 1992, 92-1 CPD ¶ 519 at 3-4 (agency properly rejected a quotation as late and refused to extend the closing date, where the late delivery was caused by a defective computer disk furnished by the agency, which was necessary to prepare quotes, but the protester was in possession

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<sup>3</sup> Any challenge to the Navy's failure to send it a copy of the amendment, as opposed to posting the amendment on the website, is an untimely protest of an alleged apparent solicitation impropriety (since the RFP set out the posting method actually used), which Performance was required to protest before the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2000).

of the disk 14 days prior to the closing date and attempted to access the disk for the first time the night before the closing date).

The protest is denied.

Anthony H. Gamboa  
Acting General Counsel