



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: SMS Systems Maintenance Services, Inc.

File: B-284550.2

Date: August 4, 2000

Leonard Walsh for the protester.

John J. Pavlick, Jr., Esq., and Rebecca E. Pearson, Esq., Venable, Baetjer, Howard & Civiletti, for Compaq Computer Corporation, an intervenor.

Randy W. Thomas, Esq., Department of the Treasury, and Roger D. Waldron, Esq., and Thedlus L. Thompson, Esq., General Services Administration, for the agencies.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's quote of services, some of which were not contained in its Federal Supply Schedule (FSS) contract, could not be selected for award in an acquisition conducted under the FSS program, where the total price of the services not included in its FSS contract, considering both the base and option periods, exceeded the micro-purchase threshold.

DECISION

SMS Systems Maintenance Services, Inc. protests the award of an order to Compaq Computer Corporation under its Federal Supply Schedule (FSS) contract, pursuant to a request for quotations (RFQ) issued by the Office of Thrift Supervision (OTS), Department of the Treasury, for computer hardware maintenance and disaster services for a 9-month base period with two 1-year option periods. SMS complains that OTS improperly failed to select SMS's lower quote to receive an order.

We deny the protest.

OTS requested quotations from SMS and Compaq, the only two FSS vendors listed on the applicable schedule, for 110 contract line items, including maintenance of a

number of VAX computers.¹ Report of OTS, Tab 1, RFQ (Mar. 29, 2000). Following the evaluation of the quotes, OTS informed SMS and Compaq that there were a number of items in the vendors' respective quotes that OTS could not find in the firms' FSS contracts. Report of OTS, Tab 4, Letter from OTS to Compaq (Apr. 21, 2000), and Tab 5, Letter from OTS to SMS (Apr. 21, 2000). Both vendors responded with additional information. On April 27, OTS informed SMS that the agency still could not find some of the required services in SMS's FSS contract. Protest, attach. 18, Letter from OTS to SMS (Apr. 27, 2000). SMS provided further information to OTS. Among other things, SMS admitted that some line items were not contained within SMS's FSS contract; SMS stated, however, that these items were of minimal value. Protest, attach. 19, Letter from SMS to OTS (Apr. 27, 2000), at 2.

The contracting officer determined that SMS's quote could not be accepted because a number of line items in SMS's quote were not in SMS's FSS contract. Report of OTS, Tab 6, Contracting Officer's Best Value Determination, at 3. Accordingly, the contracting officer rejected SMS's quote, notwithstanding its lower price, and selected Compaq's quote for award of an order. Protest, attach. 20, Letter from OTS to SMS (May 18, 2000). This protest followed.

As a general rule, contracting agencies are required to obtain full and open competition in the procurement of supplies and services. 41 U.S.C. § 253(a)(1)(A) (1994); Federal Acquisition Regulation (FAR) § 6.101. The FSS program, directed and managed by the General Services Administration, provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. FAR § 8.401(a). The procedures established for the FSS program satisfy the general requirement for full and open competition. 41 U.S.C. § 259(b)(3); FAR § 6.102(d)(3); Sales Resources Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ ____ at 3.

As both OTS and the General Services Administration (GSA) recognize, non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. See Pyxis Corp., B-282469, B-282469.2, July 15, 1999, 99-2 CPD ¶ 18 at 4; see also ATA Defense Indus., Inc. v. United States, 38 Fed. Cl. 489, 503 (1997). Our Office has rejected the notion that items not on a FSS contract may be purchased under that contract if they were "incidental" to the services or items being procured under that contract.² Pyxis Corp., supra, at 3-4.

¹ OTS is a mandatory user of the multiple award schedule for these services. Report of OTS at 1.

² SMS suggests that its non-FSS services could be purchased as incidental items under its FSS contract because these services are not "stand-alone separate"

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Compliance with applicable procurement laws and regulations does not necessarily require that a competition be conducted. Of particular relevance here, and as noted by GSA in its submission to our Office, where the price of the non-FSS products or services is at or below the \$2,500 micro-purchase threshold, these products or services can be acquired without additional competition.³ In this regard, we note that FAR § 8.404(b) recognizes ordering offices' authority to place orders at or below the micro-purchase threshold with FSS contractors,⁴ and that contracting officers have specific authority to acquire without competition supplies and services at or below the micro-purchase threshold. See 41 U.S.C. § 428(c) (Supp. IV 1998); FAR § 13.202(a)(2); Navistar Marine Instrument Corp., B-278075, Dec. 19, 1997, 97-2 CPD ¶ 168 at 2.

While admitting that a number of the line items quoted are not in its FSS contract, SMS contends that, because the total value of these non-FSS services is approximately \$2,300 (i.e., below the micro-purchase threshold), these non-FSS services can be awarded under its FSS contract. SMS calculated the value of these non-FSS services by pricing the services only over the 9-month base period. OTS contends that the value of the non-FSS services must be calculated over the base and option periods because the agency anticipates exercising the options, and that in fact the agency calculated the firms' total price for the services over the base and option periods in evaluating the vendors' quotes. Supplemental Report of OTS at 3. GSA agrees that OTS should consider the entire contract term in calculating the value of the non-FSS services. Supplemental Report of GSA at 3. SMS concedes that if the non-FSS services are priced over the option periods, then the price of its non-FSS services exceeds the micro-purchase threshold. See Protester's Supplemental Comments at 3.

Given OTS's stated intention of exercising the options, we find the agency reasonably decided to consider the prices for both the base and option periods for the purpose of determining whether the price for SMS's non-FSS services would

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services, but are integral to a larger service that is within its contract. Protester's Supplemental Comments at 14. SMS is mistaken as a matter of law. Non-FSS products and services, even if viewed as incidental or integral to FSS items, may not be purchased using FSS procedures; instead, in purchasing those items, agencies must follow applicable procurement laws and regulations, including those requiring the use of competitive procedures. See Pyxis Corp., supra, at 4; ATA Defense Indus., Inc., 38 Fed. Cl. at 503.

³ The micro-purchase threshold is defined to be \$2,500. FAR § 2.101.

⁴ This authority is specifically extended to orders under mandatory use schedules. See FAR § 8.404(c).

exceed the micro-purchase threshold. In this regard, we note that contracting officers are prohibited from breaking down its requirements into several purchases to avoid exceeding the micro-purchase threshold, see FAR § 13.003(c), and that options should generally be evaluated when they are likely to be exercised. See FAR § 17.206(a). Given that the total price of SMS's non-FSS services was reasonably found to exceed the micro-purchase threshold, SMS's quote could not be selected to receive an order under the FSS program.⁵

The protest is denied.

Robert P. Murphy
General Counsel

⁵ Because we find that OTS could not properly award SMS an order under SMS's FSS contract due to SMS's quote of non-FSS services, we do not address SMS's other protest contentions.