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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-291417

Date: December 30, 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.
Maj. Edward E. Beauchamp, and Sharon B. Patterson, Esq., Department of the Army, for the contracting agency, and Laura Mann Eyester, Esq., and John W. Klein, Esq., for the Small Business Administration.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The provisions of the Small Business Act, as amended, concerning bundling are not applicable to a solicitation that does not reflect the consolidation of services previously performed under separate smaller contracts; all of the services covered by the solicitation at issue were performed under one predecessor contract.
2. Agency has a reasonable basis to require a single web-based information retrieval system for on-line documentation as opposed to obtaining this information from multiple vendors, where it has reasonably determined that a “one stop shop” solution is critical to the agency’s national defense mission.

DECISION

USA Information Systems, Inc., a small business concern, protests the terms of request for quotations (RFQ) No. DAAH03-03-T-0009, issued by the U.S. Army Aviation and Missile Command (AMCOM) for a web-based information retrieval system for on-line documentation. USA contends that the procurement is improperly bundled to the disadvantage of small business concerns. USA also states that the brand name or equal format is restrictive of competition, contending that this requirement should be stated in terms of specific performance requirements rather specifying a brand name.

We deny the protest.

This procurement is for an information retrieval system for AMCOM that offers an entire range of military and commercial documents, logistics/parts database services, and vendor catalogs via on-line capabilities with a Windows application on the World Wide Web using a standard browser. In fiscal years (FY) 2001 and 2002, the agency purchased this requirement on a restricted basis identifying Information Handling Services (IHS), a large business, as the sole-source provider.¹ Both procurements were synopsized in the Commerce Business Daily (CBD). The CBD notices stated that all responsible sources could submit a response, which would be considered by the agency. USA submitted a response to both notices. In FY 2002, the agency determined that the majority of USA's response was acceptable; in particular, the agency noted that USA's "FLIS PLUS" software, which is USA's equivalent to "Haystack" software, was determined to meet AMCOM's minimum requirements. However, USA did not offer electronic accessibility to certain documents, *e.g.*, Department of Defense (DOD) Adopted Industry Standards and Historical DOD Standards, a full collection of American Society of Mechanical Engineers commercial standards, and a full collection of the Underwriters Laboratory commercial standards; instead, USA offered hardcopy facsimiles and/or next day delivery via courier where electronic availability did not exist. The agency determined that the lack of full Internet service availability made USA's response technically unacceptable.

For FY 2003, the agency originally intended to again issue this requirement on a sole-source basis. On August 12, however, before the solicitation was issued, USA filed a request with the agency that the solicitation be issued "without company--specific product names and numbers, using more generic descriptions." Agency Report, Tab G, Letter from USA to Army, Aug. 12, 2002. The agency then decided to compete this requirement on a full and open basis with a statement of work that described the government's minimum needs. The requirement was publicized on the Federal Business Opportunities website on September 10, 2002.

On September 12, the present RFQ was issued for the FY 2003 requirement for an information retrieval system on-line with a Windows application on the World Wide Web using a standard browser. The information retrieval system is required to contain "index information" from one website giving access to actual scanned documents. The system is to provide accessibility to over 40,000 active military documents, such as military and federal specifications, standards and handbooks, to allow full-text search capability, cut-and-paste capability, and intra-document links for data integrity. The RFQ provided that all documents are to be downloadable and

¹ The agency states that IHS has been the subscription provider for this information for approximately 12 years, even before instantaneous on-line delivery of this information became available and was identified as the agency's requirement. IHS's "Haystack" software has been on-line at this activity for more than 6 years.

printable at the desktop on demand. RFQ Statement of Work (SOW) § 2.0. The RFQ stated that the mission of the activity requires the “fast and unrestricted retrieval of information,” and that the “weapon system integrity and readiness of our forces must be maintained by an information retrieval system that provides for this expeditious processing.” RFQ SOW § 1.0.

Amendment No. 3, issued September 25, specified that the system is to be “[IHS] or equal” and “Haystack or equal,” and stated (at 2):

NOTE: See Statement of Work for a general description of those salient functional and performance characteristics that an “equal” item must meet to be acceptable for award. The information retrievable system shall operate from one web site to access all the required documentation/information. No partial quotations/multiple awards meet the government’s minimum requirement.

The RFQ stated that the government would award one contract under this solicitation to the responsible offeror which submitted the low-priced, technically acceptable quotation.

USA first contends that this requirement is improperly bundled, such that small business concerns such as USA do not have an opportunity to fairly compete for the totality of the requirements. USA contends that this RFQ can readily be drafted to promote small business participation by dividing the requirements into four lots: (1) military documents, (2) logistics parts database, (3) DOD-adopted and other adopted commercial standards, and (4) vendor catalogs on the World Wide Web.

The Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, 111 Stat. 2592, 2617-20 (1997), amended the Small Business Act and provided that, “to the maximum extent practicable,” each agency shall “avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.” 15 U.S.C. § 631(j)(3) (2000). Bundling, for purposes of the the Small Business Act, as amended, means “consolidating 2 or more requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern.” 15 U.S.C. § 632(o)(2); see Federal Acquisition Regulation § 2.101. “Separate smaller contract . . . means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.” 15 U.S.C. § 632(o)(3); see FAR § 2.101. This solicitation does not represent a “consolidation” of two or more requirements, inasmuch as the record establishes that all of the requirements here were previously provided under the one predecessor contract with IHS, a large business, and were not provided under separate smaller contracts. Thus, the Small Business Act requirements pertaining to bundling are not applicable to this solicitation.

USA also argues that this solicitation represents an improperly bundled or total package procurement in violation of the Competition in Contracting Act of 1984 (CICA). The reach of the restrictions against total package or bundled procurements in CICA is broader than the reach of restrictions against bundling under the Small Business Act. Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD ¶ 24 at 9-10. Specifically, CICA generally requires that solicitations include specifications which permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. See 10 U.S.C. §§ 2305(a)(1)(A), (B) (2000). Because procurements conducted on a bundled or total package basis can restrict competition, we will sustain a challenge to the use of such an approach where it is not necessary to satisfy the agency's needs. Better Serv., B-265751.2, Jan. 18, 1996, 96-1 CPD ¶ 90 at 2. The determination of a contracting agency's needs and the best method for accommodating them are matters primarily within the agency's discretion. Specialty Diving, Inc., B-285939, Oct. 16, 2000, 2000 CPD ¶ 169 at 3. Of particular relevance here, where a requirement relates to national defense or human safety, an agency has discretion to define the solicitation requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 5, aff'd, B-250389.2, June 21, 1993, 93-1 CPD ¶ 472.

The Army states that a single, cohesively packaged, web-based information retrieval system for on-line documentation with all the information available from a single vendor is critical to AMCOM's mission. The Army explains that this logistical and technical information is required in order to accomplish daily duties of individuals responsible for "worldwide helicopter depot maintenance, 'safety of flight' investigations/analysis, weapon system integrity and readiness, and the data is a tool used by the soldier in the field." Agency Report at 1. AMCOM's local and geographically remote user community of highly mobile logistics assistance representative support personnel located throughout the United States and in such places as Korea and Germany, liaison engineers, and depot maintenance engineering teams rely heavily on the information retrieval system that is the subject of this protest. Agency Supplemental Submission (Nov. 25, 2002), attach., Declaration of AMCOM Staff Chief, Associate Director for Aviation. The agency states that the speed with which this information can be accessed, the ease with which it can be used, and the ability to expeditiously cross reference information between sources, is vital to support the journeyman engineers, logisticians and technicians, many of whom are in the theater of operations. The agency's concern is that the inability to quickly cross reference information from various sources relating to aircraft safety, hazardous materials, and manufacturing and engineering could result in an incomplete investigation, and would likely cause users to seek information elsewhere or to simply ignore research requirements because it was too cumbersome to perform, which, ultimately, could put the soldier in the field at risk. Id. Because of these needs, the agency has determined that it is critical to have a "one stop shop" solution for obtaining and retrieving logistics and technical data necessary to accomplish mission-critical needs. Contracting Officer's Statement at 8-9. The agency also notes that time constraints to rapidly respond to critical

situations regarding safety issues preclude hardcopy products as an option. Agency Report, Tab Q, Development of Minimum Needs, at 3.

While the protester asserts that the agency has exaggerated the problems with using multiple sources to obtain this information because it can all be gathered on a single web page, AMCOM states that it does not have the mission or technical expertise to become the integrator for multiple vendors providing various data sets. Agency Supplemental Submission (Nov. 25, 2002), attach., Declaration of AMCOM Staff Chief, Associate Director for Aviation. Finally, the agency notes that although USA's software is capable of satisfying the AMCOM's requirements, USA, for whatever reason, apparently will not offer some of the required information instantaneously in an on-line format.² Based on these considerations, we find that the agency has provided a reasonable basis for its determination to purchase a web-based information retrieval system for on-line documentation from a single source.³ See Specialty Diving, Inc., *supra*.

USA also contends that the solicitation's mention of the "Haystack" system effectively allows for award only to IHS, even though it states "Haystack or equal," because such a description indicates IHS-specific features not found in other information retrieval systems. However, in its protest, USA does not contest or point to any specific salient characteristics in the SOW that it cannot meet or which are overly restrictive,⁴ but alleges that the agency must state its requirements in terms of

² In its supplemental comments, IHS alleges "on information and belief" that certain standards organizations that provide documents which are required by this solicitation have an exclusive agreement with IHS. This argument is untimely because it was first raised in USA's supplemental comments, submitted more than 2 months after the original protest was filed. USA Supplemental Comments (Dec. 9, 2002) at 9. Our Bid Protest Regulations require that protests based upon alleged improprieties apparent from the solicitation, such as these contentions, be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2002). Each protest ground must satisfy the timeliness requirements of our Bid Protest Regulations, which do not contemplate the unwarranted piecemeal presentation or development of protests. RAMCOR Servs. Group, Inc., B-276633.2 *et al.*, Mar. 23, 1998, 98-1 CPD ¶ 121 at 9 n.9.

³ For the same reasons, this procurement does not violate the FAR § 19.202-1(a) requirement to divide proposed acquisitions of supplies and services into reasonably small lots to permit offer on quantities less than the total requirement.

⁴ In its comments on the agency report, USA attacks various provisions in the SOW. This too constitutes an untimely piecemeal protest of alleged solicitation improprieties. 4 C.F.R. § 21.2(a)(1). In these comments, USA also raises various other new contentions that it could have raised in its initial protest, *e.g.*, its

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specific performance requirements. We disagree. FAR § 11.104(a) expresses only a preference for performance specifications and recognizes that the use of brand name or equal purchase descriptions may be advantageous under certain circumstances. Moreover, there is no requirement that agencies use only performance specifications in a brand name or equal purchase description. See FAR § 11.104(b); Adams Magnetic Prods., Inc., B-256041, May 3, 1994, 94-1 CPD ¶ 293 at 6.

The terms of the solicitation, as amended, clearly allow for award on a brand name or equal basis if the offer met the defined functional requirements of the IHS and “Haystack” system. USA has failed to show how the purchase description in the RFQ prevented the protester from submitting an intelligently prepared proposal or failed to ensure competition on an equal basis. In this regard, we note that all specifications and other solicitation requirements are potentially restrictive of competition to some extent, and the mere fact that a particular prospective offeror is unable or unwilling to compete under a solicitation that reflects the agency’s needs does not establish that the solicitation is unduly restrictive or that the agency is using other than competitive procedures. Virginia Elec. and Power Co.; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 15.

USA references various other government activities that do allow for multiple vendors, instead of a single one, as evidence that the agency’s bundling decision is unreasonable. USA also references voluntary corrective action taken by another government activity in response to its protest of a “Haystack or equal” specification. However, the way other agencies have met their particular needs does not establish that the Army is acting unreasonably, where as here the agency has established a reasonable basis for its requirements. All-Pro Turf, Inc., B-214339, July 16, 1984, 84-2 CPD ¶ 49 at 6.

The protest is denied.

Anthony H. Gamboa
General Counsel

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contention that IHS may have prepared the SOW and thus has an organizational conflict of interest, which we will not consider because they were untimely raised.