

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Global Analytic Information Technology Services, Inc.

File: B-297200.3

Date: March 21, 2006

William T. Welch, Esq., Barton, Baker, McMahon, Hildebrant & Tolle, LLP, for the protester.

Angela B. Styles, Esq., and Robert K. Huffman, Esq., Miller & Chevalier, for McLane Advanced Technologies LLC, the intervenor.

Lt. Col. Frank A. March, Department of the Army, Thedlus L. Thompson, Esq., General Services Administration, and John W. Klein, Esq., and Kenneth Dodds, Esq., Small Business Administration, for the agencies.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency initially set Federal Supply Schedule (FSS) procurement aside for small businesses, but subsequently decided to conduct purchase on non-set-aside basis, agency's elimination of set-aside was unobjectionable; small business set-aside requirements do not apply to FSS purchases.

DECISION

Global Analytic Information Technology Services, Inc. (GAITS) protests the terms of request for quotations (RFQ) No. W91QUZ-06-Q-0001 (RFQ-0001), issued by the Department of the Army, Army Contracting Agency, Information Technology E-Commerce and Commercial Contracting Center, as a Federal Supply Schedule (FSS) purchase of project management and support services for the Standard Army Maintenance System-Enhanced and Legacy Standard Army Management Information Systems modernization program. GAITS, a small business concern, argues that the solicitation should be set aside for small businesses.

We deny the protest.

The agency originally sought the services here under RFQ No. W91QUZ-05-Q-0005, which was set aside for small business concerns. This resulted in issuance of a task order to McLane Advanced Technologies, LLC, which was followed by the filing of

size protests with the Small Business Administration (SBA) challenging McLane's size status. SBA determined that McLane was not a small business concern, and subsequently denied McLane's appeal of the determination. Thereafter, the Army terminated McLane's task order and, on December 6, 2005, posted RFQ-0001 on the General Services Administration's (GSA) e-Buy electronic service, requesting that vendors holding a specified FSS contract submit quotations for a base year, with four 1-year options. This RFQ is not set aside for small businesses.

GAITS asserts that the RFQ should be aside for small businesses because it was previously issued on a set-aside basis. According to GAITS, based on the principles of equity and fairness, where an agency initially competes a requirement as a small business set-aside, it should be required to complete the competition on that basis. The protester also asserts that the Army has violated Federal Acquisition Regulation (FAR) § 19.506 requirements regarding the withdrawal of set-asides.

The protest is without merit. As noted above, the agency conducted this procurement as an FSS acquisition under FAR part 8.4. FAR § 8.404(a) specifically provides that FAR part 19 (Small Business Programs) does "not apply" (except under circumstances not relevant here) to orders placed against FSS contracts. Thus, the agency was not required to set the requirement aside in the first instance, and was not precluded from subsequently resoliciting the requirement on an unrestricted basis. In this latter regard, we have specifically held that the FAR exempts task orders issued under FSS contracts from application of the set-aside withdrawal requirements found in FAR § 19.506. Millennium Data Sys., Inc., B-292357.2, Mar. 12, 2004, 2004 CPD ¶ 48 at 9-10. The protester's belief that equity and fairness dictate that the set-aside restriction be maintained under the reissued RFQ does not provide a basis for us to conclude that the agency was required to do so.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹During the course of this protest, we solicited the views of GSA and SBA. GSA expressed the view that (1) FAR § 8.404(a) prohibited the Army from setting the requirement aside for small businesses, since it makes FAR part 19 inapplicable to FSS purchases (we do not reach this question in our decision here), and that (2) in any case, the Army was not required to set the reissued RFQ aside, since "it is clear that the FAR does not intend that Part 19 apply to orders placed under the MAS [multiple award schedule] program." GSA Response to Protest at 2. SBA expressed the limited view that it was permissible for the agency to set the requirement aside initially. SBA did not express a view as to whether it was proper for the agency to reissue the RFQ on an unrestricted basis. SBA Response to Protest at 2-4.