



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Lockmasters Security Institute, Inc.

File: B-299456

Date: May 21, 2007

Kevin P. Connelly, Esq., and Amanda B. Weiner, Esq., Seyfarth Shaw LLP, for the protester.

Wilburt Jones, Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to agency's limitation of competition under a request for quotations (RFQ) to vendors who held a particular General Services Administration (GSA) Federal Supply Schedule (FSS) contract is denied where agency had a reasonable basis for its decision to seek quotations under that schedule.

2. Agency does not unreasonably limit competition where it issues an RFQ under a different GSA FSS contract than the schedule under which the incumbent contractor had been providing the agency's requirements.

DECISION

Lockmasters Security Institute, Inc. (LSI) protests the terms of request for quotations (RFQ) No. HSCG23-07-Q-PTC006, issued by the Department of Homeland Security, United States Coast Guard, for technical support services for the agency's Office of Security Policy and Management. The protester argues that the agency's decision to obtain these services under Schedule 84 of the General Services Administration (GSA) Federal Supply Schedule (FSS)--as opposed to procuring them under Schedule 69, which was used to procure these services previously--was improper, and further argues that the solicitation is restrictive of competition because the decision to procure under Schedule 84 precludes LSI from competing for the work.

We deny the protest.

BACKGROUND

The RFQ here seeks quotations to provide training and technical support for the Coast Guard's Office of Security Policy and Management. The contractor will be required to provide a 5-day training course for newly-appointed Command Security Officers (CSO) using Coast Guard-developed course curriculums in Personal Security, Physical Security, Operations Security (OPSEC), the Coast Guard's Antiterrorism Program, Information Security, and Security Awareness and Training. RFQ, Statement of Work (SOW), ¶ 1.1. The contractor provides six such courses per year for 20 students per course, develops the course schedule, and administers a Coast-Guard developed questionnaire. Id. The RFQ anticipates award of a blanket purchase agreement (BPA) with a 1-year base term, and four 1-year options.

The agency had previously obtained its requirements for the training courses under a BPA issued to LSI in 2001. The BPA was issued under Schedule 69, "Training Aids & Devices, Instructor-Led Training; Course Development; Test Administration," special item number (SIN) 27-400 for "Instructor Led Training to Include General Education, Computer, Vocational/Trade, Health/Safety, and Business," and SIN 27-500 for "Course Development and Test Administration." LSI's BPA to provide these courses expired on September 26, 2006. Contracting Officer's (CO) Statement at 4.

The current RFQ limits competition to vendors who hold contracts under Schedule 84, "Total Solutions for Law Enforcement, Security, Facilities Management, Fire, Rescue, Clothing, Marine Craft and Emergency/Disaster Response," SIN 246-52 for "Professional Security/Facility Management Services - Including Security Consulting, Training and Facility Management Consulting." RFQ at 1. Prior to issuing the RFQ, the agency determined that Schedule 84 would provide vendors with "skill sets that would be a better match for the requirements than those vendors under Schedule 69, and whose knowledge of the security field would be greater." CO's Statement at 2.

The agency issued the RFQ through letters to four vendors, rather than posting the RFQ to the GSA electronic RFQ system, e-Buy. CO's Statement at 4. Because LSI, the incumbent here, was not listed as a contractor under Schedule 84, the agency did not solicit LSI.¹ Id.

In a letter, styled as an agency-level protest,² LSI challenged the agency's determination to limit the competition to Schedule 84 vendors. Agency Report (AR),

¹ LSI acknowledges that it does not have a contract under Schedule 84. Protest at 4.

² The agency argues that LSI's letter did not constitute a protest because it lacked a sufficient legal basis for LSI's challenge to its exclusion from the competition. The filing of this letter had no affect on the timeliness of the protest to our Office, as the protest here was filed on February 12, 2007, prior to the time for receipt of

(continued...)

Tab 8, Agency-Level Protest, Jan. 18, 2007, at 1. LSI argued that it had successfully performed the work under Schedule 69 and requested that it be allowed to compete. Id. at 2. In response, the agency stated that, in its view, Schedule 84 was the more appropriate vehicle for the work:

The last solicitation for this requirement . . . was solicited under GSA Schedule 69. That schedule did not yield the desired level of competition as two bids were received and only one bid was determined to be technically acceptable. As is USCG's standard procedure, extensive market research was conducted to ensure that a schedule would be used that best fit the requirement and that would generate a sufficient number of qualified bidders. After comparing schedules and considering our customer's needs, it was determined that the most suitable GSA Schedule for this requirement is Schedule 084 SIN 246-52.

AR, Tab 9, Letter to LSI, Jan. 31, 2007, at 1.

Following receipt of the agency's response, LSI filed this protest.

DISCUSSION

The protester challenges the Coast Guard's determination to limit competition under the RFQ to vendors which hold contracts under Schedule 84. Specifically, the protester argues that the agency unreasonably determined that Schedule 84 was more appropriate for meeting the agency's needs than Schedule 69, and also argues that the agency's actions unreasonably excluded LSI, the incumbent contractor, from the competition. As discussed below, we conclude that the protest lacks merit for the following reasons: (1) the SOW was within the scope of both Schedules 69 and 84; (2) the agency reasonably determined that Schedule 84 was the more suitable schedule to meet the SOW requirements, and the Federal Acquisition Regulation (FAR) does not require an agency using the FSS to solicit vendors under all relevant schedules; and (3) the protester was not entitled, solely by virtue of being the incumbent vendor, to participate in the competition.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services.³ See

(...continued)

quotations on February 16, 2007. In any event, we believe that LSI's agency level protest satisfies the requirements of FAR § 33.103.

³ The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3) (2000); FAR § 6.102(d)(3); American Sys. Consulting, Inc., B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 at 3.

generally FAR subpart 8.4. In FSS buys, as in other procurements, the determination of what the agency needs, and which products or services meet those needs, is within the agency's discretion; we will not sustain a protest in this area unless the determination lacks a reasonable basis. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139, Aug. 23, 2000 at 4. Agencies may only place orders with a vendor whose schedule contract contains the goods or services required under the SOW. Altos Fed. Group, Inc., B-294120, July 28, 2004, 2004 CPD ¶ 172 at 4.

When establishing a BPA for services under the FSS that requires vendors to submit quotes for work based on hourly rates, agencies must develop a statement of work and provide the RFQ to at least three schedule contractors. FAR §§ 8.405-2(c), 8.405-3(a). In addition to the three vendors, agencies seeking to obtain their requirements under a BPA must also provide the RFQ to additional schedule contractors, based on considerations such as "the complexity, scope and estimated value of the requirement" as well as market research; agencies may also seek price reductions from schedule contractors. FAR § 8.405-2(c)(3).

First, we think the record here shows that this requirement is within the scope of both Schedules 69 and 84. SIN 246-52 of Schedule 84 clearly includes services for security training, whereas SINs 27-400 and 27-500 of Schedule 69 clearly include services for training and testing, albeit not specifically in the security field.⁴

During the course of this protest, our Office solicited the views of GSA on this question, which advised that:

After reviewing the Request for Quotations and Statement of Work, GSA believes that the security training services at issue in this procurement are within the scope of both Schedules 69 and 84. The current practice under the MAS program is for general training to be included under Schedule 69; however, subject-specific training is also offered on many individual schedules in order to supplement the individual schedule offerings We realize that this may result in some degree of overlap or potential duplication in the schedule offerings; however, the Federal Acquisition Service believes minor duplication is preferable to significant gaps in coverage.

GSA Comments on Agency Report, at 1.

⁴ The protester does not allege that the SOW is outside the scope of Schedule 84; rather, the protester challenges the agency's determination that Schedule 84 was the more appropriate source for meeting its needs.

On this record, we believe that the agency reasonably determined that the work was covered by Schedule 84.⁵

Next, as to the agency's determination to seek quotations only under Schedule 84, but not Schedule 69, the protester argues that the agency's determination lacked a reasonable basis. The protester argues that although SIN 246-52 of Schedule 84 includes training services, SINs 27-400 and 27-500 of Schedule 69 are more directly related to the SOW because they address the development and teaching of courses.

As discussed above, agencies have broad discretion in determining how to meet their needs and our Office will not substitute our judgment for the agency's. Draeger Safety, Inc., *supra*. The agency here concluded that the more specific security aspects of Schedule 84 made that contract vehicle more appropriate for the agency's needs than the general instruction and training services provided under Schedule 69.⁶ CO's Statement at 2. Although the protester disagrees with this assessment, we do not believe that the protester has provided a reasonable basis to challenge the agency's determination.⁷

⁵ Prior to submitting its protest, LSI sought the views of a GSA contracting specialist who stated her opinion that Schedule 69, rather than Schedule 84, was the appropriate schedule for this requirement. Protest at 7-8. The record shows, however, that the Coast Guard was unaware of the views of the contracting specialist. CO's Statement at 6-7. Moreover, GSA advises that, notwithstanding the views of the contracting specialist, the agency views this requirement as within the scope of both schedules. GSA Comments on Agency Report, at 1 n.1.

⁶ In this regard, GSA also noted that "[p]erformance of this SOW would require extensive experience within the security field . . . more than simply the ability of an instruct[or] to proctor a class," and thus the "overwhelming importance of the security aspect of the requirement" made selection of Schedule 84 appropriate for the agency's requirements. *Id.* at 2.

⁷ The protester also challenges the agency's analysis and use of market research. In this regard, the protester argues that the agency relied on flawed market research to conclude that Schedule 84 would provide more competition than Schedule 69. We believe that this allegation is not relevant to the reasonableness of the agency's decision to restrict the competition to Schedule 84 vendors. As discussed above, the agency had a reasonable basis to issue the RFQ under Schedule 84 because the SOW was within the scope of that schedule and because the agency concluded that Schedule 84 better met the agency's requirements than Schedule 69. Moreover, the FAR does not require, as the protester suggests, that an agency justify its selection of one schedule contract, as opposed to another, with market research into which schedule will generate more competition; rather, as relevant here, agencies must use market research to determine the number of vendors solicited. *See* FAR § 8.404-2(c)(3).

The protester also argues that the agency should have allowed vendors under both Schedules 84 and 69 to participate in the competition. The protester notes that GSA stated in its comments on the agency report that “GSA encourages our customer agencies to solicit offers from all Federal Supply Schedule holders offering services that are within the scope of the anticipated procurement as this maximizes competition.”⁸ GSA Comments on Agency Report at 1.

The protester does not, however, identify any requirement that the agency solicit vendors under every schedule under which its needs might be met, nor does the protester identify any procedures than an agency must follow when there is more than one schedule under which an agency’s needs could be met. We agree with GSA that the solicitation of all potential vendors promotes competition; however, such an approach is not required under the regulations governing the FSS. Specifically, there is no requirement that an agency solicit vendors from multiple schedules when it concludes that a single schedule meets its needs, and otherwise satisfies the requirements of FAR part 8.4. Under these circumstances, there is no basis to conclude that the agency’s decision to limit the competition to Schedule 84 vendors was objectionable.

Finally, the protester argues that the agency unreasonably limited the competition because allowing only Schedule 84 vendors to submit quotations meant that LSI, the incumbent contractor, would be excluded from the competition. As discussed above, agencies that seek to establish a BPA under the FSS must solicit at least three vendors, and must also consider whether other vendors should be solicited. FAR § 8.405-2(c)(3). Under the FSS, however, a vendor has no legal expectation or entitlement to be one of those vendors solicited merely because it was the incumbent. Allmond & Co., B-298946, Jan. 9, 2007, 2007 CPD ¶ 8, at 2. There is thus

⁸ LSI argues that GSA’s position indicates that it is “permissible” for agencies to solicit vendors under more than one schedule, and that GSA “encourages” agencies to do so. LSI Response to GSA Comments at 2. LSI does not argue, however, that agencies are required to do so. See id.

no basis for the protester to argue that, even if the agency had solicited vendors under Schedule 69, the agency was required to solicit LSI for the requirements.

The protest is denied.⁹

Gary L. Kepplinger
General Counsel

⁹ The protester also alleges that the agency did not follow the procedures under FAR § 8.405-2(c)(3) for soliciting vendors. For the record, we see no violation of FAR requirements by the agency here. In any event, because the agency reasonably limited competition to vendors who have contracts under Schedule 84 and the protester does not have such a contract, LSI is not an interested party to raise this objection. Bid Protest Regulations, 4 C.F.R. § 21.1(a); Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.