



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: FitNet Purchasing Alliance

File: B-309911

Date: November 2, 2007

Raul Espinosa for the protester.

Capt. Charles D. Halverson, Department of the Army; Thedlus L. Thompson, Esq., General Services Administration; and John W. Klein, Esq., and Laura Mann Eyester, Esq., Small Business Administration, for the agencies.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's decision not to set aside for small businesses an order under the Federal Supply Schedule (FSS) program valued at approximately \$12,000 is dismissed where the protester does not hold an FSS contract, and therefore is not an interested party to pursue this matter.

DECISION

FitNet Purchasing Alliance, a small business, protests the terms of a reverse auction under request for quotations (RFQ) No. SWCSKQ-7177-N035 by the Department of the Army for 50 wardrobe lockers to be delivered to Fort Bragg, North Carolina. FitNet argues that this requirement must be set aside for small businesses.

We dismiss the protest.

On July 23, 2007, the Fort Bragg Directorate of Contracting used the FedBid website to commence an electronic reverse auction for 50 wardrobe lockers at a target price of \$12,500.¹ This posting was designated as "Buy No. 43672_01." The posting listed a

¹ FedBid, Inc. is a commercial online procurement services provider that runs a website at FedBid.com, which among other things, hosts reverse auctions.

closing time of “15:00 EST” on October 2. The posting also stated “Set-Aside: N/A (All Sellers can bid)” and “Contract Type: GSA Schedules Only.” Agency Report (AR), Tab 3, RFQ, at 2.

The posting thereby informed readers that the requirement was not set aside for small businesses, and that only vendors holding contracts under the General Services Administration’s (GSA) Federal Supply Schedule (FSS) program were invited to submit quotations.

On July 26, FitNet filed this protest, objecting to several aspects of the procurement; principally, that the requirement must be set aside for small businesses. During the course of the protest, our Office inquired whether FitNet holds an FSS contract. In answer, GSA advised that “to date, no Schedule contracts have been awarded to either FitNet Purchasing Alliance or FitNet International Corporation, the legal name of the company.” Letter from GSA Assistant Commissioner to GAO, Sept. 27, 2007, at 1. FitNet does not dispute this fact. Protester’s Interested Party Brief, Oct. 5, 2007, at 2.

During the course of this protest, we sought the views of both the GSA, which administers the FSS program, and the Small Business Administration, as well as the Army. The submissions made clear that these agencies do not agree about how the set-aside requirements of the Small Business Act, 15 U.S.C. § 644(j) (2000), apply to orders placed against the FSS. In our view, however, regardless of how these requirements apply to the FSS, a protester that does not hold an FSS contract is not an interested party to challenge a decision not to set aside an individual order.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (2000 & Supp. V 2005), only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2007). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57.

Here, the Army issued a solicitation seeking competition among holders of FSS contracts—an approach which meets the statutory requirements for using full and open competition. 41 U.S.C. § 259(b)(3) (2000); Federal Acquisition Regulation (FAR) § 6.102(d)(3); Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3. Given that the decision was made to procure via the FSS,

FitNet, which does not hold an FSS contract, is not an interested party to protest the terms of the solicitation. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5.

The protest is dismissed.

Gary L. Kepplinger
General Counsel