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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: FitNet International Corporation

File: B-411520

Date: August 14, 2015

Raul Espinosa, FitNet International Corporation, for the protester.
Major Travis P. Sommer, Department of the Army, for the agency.
Katherine I. Riback, Esq., Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office
of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's use of FedBid for a Federal Supply Schedule (FSS) purchase is denied where the agency complied with the applicable Federal Acquisition Regulation (FAR) provision--and considered at least three schedule contractors--as necessary to solicit the requirement through the FSS program.

DECISION

FitNet International Corporation, of Saint Augustine, Florida, a small business, protests the terms of solicitation No. 10662601, issued by the Department of the Army, Army National Guard Bureau-Rhode Island, for two treadmills to be delivered to the Combined Support Maintenance Facility, in East Greenwich, Rhode Island. FitNet argues that this solicitation improperly limits competition to Federal Supply Schedule (FSS) vendors.

We deny the protest.

BACKGROUND

On May 4, 2015, the Army posted the solicitation on the FedBid website for a reverse auction for two Spirit Fitness CT800 treadmills.¹ Agency Report (AR) at 1; Solicitation at 1. The solicitation, a small-business set-aside, restricted the

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

competition to vendors holding contracts under the General Services Administration's (GSA) FSS No. 7810, Athletic and Sporting Equipment. Solicitation at 1.

Prior to the solicitation's May 11 bid closing date, FitNet filed this protest with our Office. During the course of this protest, the agency has advised that it received bids from six different small business vendors prior to the solicitation's closing date. AR at 2; Tab 8, FedBid Summary.

DISCUSSION

FitNet, which does not hold an FSS contract,² argues that the FedBid system may not be used for GSA schedule purchases "given the limited number of schedule holders on it," and specifically contends that, there is only one small business FSS contractor that can meet the solicitation's requirement.³ FitNet Email (May 19, 2015).

The FSS program gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) § 8.401(a). The procedures established for the FSS program, although streamlined, satisfy the requirements for full and open competition. 10 U.S.C. § 2302(2)(c); Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 3. For orders exceeding the micro-purchase threshold, such as the one here, consideration of at least three schedule contractors is required. FAR §§ 8.405-1(c), 8.405-2(c)(2).

Here, the Army issued the solicitation seeking competition among holders of FSS contracts, and received bids from six offerors. Contracting Officer (CO) Statement

² During the course of this protest, our Office inquired as to whether FitNet holds an FSS contract. GAO Email (May 13, 2015). FitNet responded: "I am registered on FEDBID to bid on contracts and the FSS restriction excludes FitNet." FitNet Email (May 19, 2015). We conclude from FitNet's response that it does not have a GSA FSS contract for the item requested or an equal item.

³ FitNet also argues that, the agency's use of FSS procedures in this procurement essentially constitute a negative responsibility determination to exclude FitNet from bidding, and that this negative determination should have been referred by the contracting officer to the Small Business Administration (SBA) under the SBA's certificate of competency procedures. The protester's argument in this regard, however, does not assert a scenario whereby the agency has made any decision regarding the protester's responsibility that would have precluded the protester from competing for the contract. Accordingly, we find that this contention fails to state a valid basis of protest.

at 2. Accordingly, the record reflects that the agency complied with the applicable FAR provision--and considered at least three schedule contractors--as necessary to solicit this requirement through the FSS program. FAR § 8.405-1(c); see CO Statement at 2; AR at 2; Tab 8, FedBid Summary. As a result, FitNet has not demonstrated that the Army's use of FedBid for this GSA schedule purchase is improper.

The protest is denied.

Susan A. Poling
General Counsel