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Decision

Matter of: AmeriGuard Security Services, Inc.

File: B-411513.2

Date: October 2, 2015

Johnathan M. Bailey, Esq., Bailey & Bailey, PC, for the protester.
Katherine S. Nucci, Esq., Thompson Coburn LLP, for Paragon Systems, Inc., the intervenor.
Richard Bergeron, Esq., Department of Health and Human Services, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that vendor did not have ordered items on its Federal Supply Schedule (FSS) contract is denied where items were added to its FSS contract via a modification that was effective by the time of the FSS order.

DECISION

AmeriGuard Security Services, Inc. (AmeriGuard), of Fresno, California, protests the Department of Health and Human Services' (HHS) issuance of a task order to Paragon Systems, Inc. (Paragon), of Herndon, Virginia, under request for quotations (RFQ) No. 15-233-SOL-00130, for guard services. AmeriGuard primarily asserts that Paragon's quotation was unacceptable because not all of the services quoted were on Paragon's Federal Supply Schedule (FSS) schedule contract by the time required. AmeriGuard also challenges the evaluation of its quotation.

We deny the protest.

BACKGROUND

The RFQ was issued on March 3, 2015, via the General Services Administration's (GSA) e-Buy portal, to all qualified firms holding FSS contracts under GSA Schedule 84, SIN 246-54, for Protective Service Occupations. The RFQ seeks to procure security guard services at HHS facilities in Maryland, Alabama, California, and Massachusetts. Agency Report (AR), Tab 3, RFQ, at 5. AmeriGuard is the incumbent contractor. Under the RFQ, award was to be made on a "best-value"

basis, considering: technical capability, including subfactors (in descending order of importance) for technical approach, management approach, and corporate capability; past performance; and price. RFQ at 25-26. The RFQ advised that when combined, all evaluation factors other than price were significantly more important than price. RFQ at 25.

Seven quotations were received by the closing date for initial quotations of March 19, 2015. AR at 2. After conducting discussions with vendors, the agency requested revised quotations to be submitted by April 15. Based upon its review of the revised quotations, the agency determined that Paragon's quotation represented the best value to the government. AR, Tab 6, Award Decision Document, at 9. After the agency on April 30 issued the task order to Paragon, AmeriGuard filed a protest with our Office challenging the order on several grounds, including that not all of the services quoted were on Paragon's FSS schedule contract by the time required.

On May 29, the agency advised GAO that it was taking corrective action. Specifically, noting that the due date for final revised quotations had been April 15, and the order had been issued on April 30, the agency stated that it "will use the above dates to verify quoters' eligibility for award using documentation obtained directly from GSA to confirm that the awardee had prices for all job classifications and locations by the required time." Agency Notice of Corrective Action, May 29, 2015. The agency indicated that it would then "make a new award decision in accordance with the terms of the solicitation." *Id.* GAO dismissed the protest on June 1. B-411513, June 1, 2015 (unpublished decision).

On June 19, the source selection authority (SSA) signed a new source selection decision. As indicated below, Paragon's quotation was evaluated as exceptional for technical capability and acceptable (the highest rating given) for past performance, with the lowest price (among quotations that included all of the required work).

		Paragon	Offeror B	Offeror C	Offeror D	AmeriGuard
TECHNICAL CAPABILITY						
	Technical Approach	Exceptional	Good	Exceptional	Exceptional	Exceptional
	Management Approach	Exceptional	Exceptional	Exceptional	Exceptional	Good
	Corporate Capability	Exceptional	Exceptional	Exceptional	Exceptional	Good
	Overall Technical	Exceptional	Exceptional	Exceptional	Exceptional	Good
PAST PERFORMANCE		Acceptable	Acceptable	Marginal	Acceptable	Marginal
PRICE		\$30,591,086	\$31,229,544	\$34,587,150	\$36,318,167	\$31,564,230

AR, Tab 6, Award Decision Document, at 5.¹ In addition,

Paragon’s price was verified to determine if their proposed pricing corresponded with their Federal Supply Schedule (FSS) by reviewing modifications PO-0102 effective March 22, 2015 and PO-0103 effective April 30, 2015 to their schedule contract This review concluded that the required locations, labor categories, wage determinations and collective bargaining agreement were on their GSA contract at prices that did not exceed their quote.

Id.

Based on the evaluation of the revised, April 15 quotations, the SSA determined that Paragon’s quotation represented “the best overall value to the Government,” such that “it is in the Government’s best interest to reaffirm its award to Paragon systems.” AR, Tab 6, Award Decision Document, at 9. AmeriGuard then filed this protest with our Office.

DISCUSSION

AmeriGuard asserts that not all of the required guard services were part of Paragon’s FSS contract in time to properly receive an order for those items. In this regard, as a general matter, FSS procedures provide agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. Federal Acquisition Regulation (FAR) § 8.402(a). Section 152(3) of title 41 of the United States Code provides that the procedures established for the FSS program, although streamlined, satisfy the requirement for

¹ The prices quoted by two vendors, not listed in the chart above, did not include all of required work. AR, Tab 6, Award Decision Document, at 5.

full and open competition in 41 U.S.C. § 3301(a)(1). 41 U.S.C. § 153(3); FAR § 6.102(d)(3).

However, non-FSS products and services--frequently termed "open market"--may not be purchased using FSS procedures; their purchase requires compliance with otherwise applicable procurement laws and regulations, including those requiring the use of full competitive procedures. Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4. Thus, where an agency announces its intention to order from an existing FSS, all items quoted and ordered are required to be on the vendor's schedule contract as a precondition to its receiving the order. US Investigations Services, Professional Services Division, Inc., B-410454.2, Jan. 15, 2015, 2015 CPD ¶ 44 at 3; Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n.1. The sole exception to this requirement is for items that do not exceed the micro-purchase threshold, since such items properly may be purchased outside the normal competition requirements. See FAR § 2.101; Maybank Indus., LLC, B-403327, B-403327.2, Oct. 21, 2010, 2010 CPD ¶ 249 at 4.

Here, the parties differ with regard to when Paragon's FSS contract was required to include the items for which the order was issued. AmeriGuard asserts that a vendor must have prices for all job classifications and locations on its FSS contract by the closing date of the RFQ. Thus, according to the protester, Paragon's request on March 19, 2015 to modify its FSS schedule to add services and locations being procured here (Modification PO-0102, effective March 22, 2015), AR, Tab 10, Modification PO-0102, and its similar request on April 21 to further modify its FSS schedule contract to add a General Clerk III position for HHS's Parklawn Complex facilities in Rockville, Maryland (Modification PO-0103, effective April 30, 2015), AR, Tab 10, Modification PO-0103, should be ignored since both came after the March 19 closing date for initial quotations. The protester concludes that since Paragon's FSS schedule contract did not include the quoted (and required) labor categories for the required locations by the March 19 closing date, the order to Paragon was improper. HHS, on the other hand, maintains that the order was proper because Paragon's schedule contract had been modified to include the required labor categories/locations by April 30, the date of the order.

We agree with the agency. In this regard, we have previously recognized that when an agency conducts a procurement under the FSS program, all items ordered must be on the vendor's FSS contract at the time the order is issued. See Hi-Tech Bed Systems Corp., B-406925, Sept. 27, 2012, 2012 CPD ¶ 283 at 4; AINS, Inc., B-405902.3, May 31, 2012, 2012 CPD ¶ 180 at 8; Science Applications Int'l Corp., *supra*; Symplicity Corp., *supra*. We see nothing in the procurement here that would require application of a different rule.

AmeriGuard also asserts that while Paragon submitted its request to the GSA contracting officer to modify its FSS contract to add a General Clerk III position on April 21, prior to the issuance of the April 30 order,² the GSA contracting officer did not sign the modification until May 8, after issuance of the order. AR, Tab 11, Modification PO-0103. The protester concludes, therefore, that the General Clerk III position which Paragon quoted for the Parklawn Complex was not on its FSS schedule as of the time of award.

The applicable GSA regulations, however, state that where a vendor requests modification of its FSS contract, generally “[t]he effective date for any modification is the date specified in the modification, except as otherwise provided in the Price Reductions Clause at 552.238-75.” 48 C.F.R. § 552.238-81(c).³ Here, the “Effective Date” on the face of Modification PO-0103 to Paragon’s FSS contract, adding the General Clerk III position, is April 30, 2015. AR, Tab 11, Modification PO-0103. Accordingly, the record indicates that Paragon’s FSS contract included the General Clerk III position for the Parklawn Complex effective as of the date of HHS’s issuance of the April 30 task order.⁴

² While the order includes an April 28 “Date of Order,” it was signed by the HHS contracting officer, and thus issued, on April 30. AR, Tab 7.

³ Our review indicates that the Price Reductions Clause is not pertinent here.

⁴ The protester also asserts that Paragon’s FSS schedule contract failed to comply with the requirement in the FSS refresh solicitation for Schedule 84, 7FCI-L3-030084-B Refresh # 25, applicable to Group 63, SIN 246-54, for Protective Service Occupations, that:

For any Vendor to properly quote and receive Task Orders that are within scope of their contract, the GSA Schedule contract must incorporate appropriate Wage Determinations and/or Collective Bargaining Agreements in effect at the facilities covered by the Task Ordering Agency’s Request for Quotations by the closing date of the RFQ.

AR, Tab 22, 7FCI-L3-030084-B Refresh # 25, FSC Group 63, at 17. This refresh solicitation, however, was issued on April 29, 2015, and the modification to Paragon’s FSS contract to incorporate the terms of the refresh was not signed by the GSA contracting officer until May 27, 2015, after issuance of this solicitation. See Paragon Comments, Aug. 17, 2015, at 1-2, FSS Modification CM-A440 of Contract GS-07F-0418K; Supp. AR at 2. The FSS clause applicable here, instead only provides that: “Fully burdened rates must be in compliance with [Department of Labor] SCA [Service Contract Act] Wage Determinations (or applicable Collective Bargaining Agreements) for SCA Covered services.” AR, Tab 8, 7FCI-L3-030084-B-

(continued...)

AmeriGuard also challenges the agency's evaluation of its quotation. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1); Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 6. A protester is not an interested party to challenge an agency's evaluation of the awardee where it would not be in line for award if the protest allegations were correct. Morpho Detection, Inc., B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 at 7; CACI Dynamic Sys., Inc., B-406130, Feb. 28, 2012, 2012 CPD ¶ 77 at 7-8.

Here, the record indicates that AmeriGuard is not an interested party to maintain its challenge to the evaluation of its quotation. In this regard, AmeriGuard asserts that it "should have received Exceptional [Technical Capability] ratings across the board and Acceptable past performance ratings." Supp. Comments at 2. However, were AmeriGuard to prevail in this respect, and its adjectival ratings were increased as it requests, AmeriGuard's technical capability and past performance ratings would have been identical to Paragon's, but at a higher price. AmeriGuard, accordingly, cannot demonstrate that, were its protest in this regard sustained, it would be in line for award. AmeriGuard is therefore not an interested party to challenge the evaluation of its technical quotation.

The protest is denied.

Susan A. Poling
General Counsel

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2013/1/3, 246-54 Evaluation, at 2; see Supp. AR at 2. The protester has made no showing that Paragon failed to comply with this requirement.