



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Security Systems, Inc.

File: B-281745.2

Date: April 29, 1999

Hilary Cairnie, Esq., Dykema Gossett, for the protester.

Ronald H. Uscher, Esq., and Nick R. Hoogstraten, Esq., Bastianelli, Brown & Kelley, for Federal Lock & Safe, Inc., an intervenor.

James L. Weiner, Esq., Department of the Interior, for the agency.

Jacqueline Maeder, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined to take corrective action by amending solicitation and requesting revised proposals after disclosing protester/awardee's prices where award had been made on the basis of a materially defective solicitation.

DECISION

Federal Security Systems, Inc. (FSS) protests the corrective action taken by the Department of the Interior, National Business Center in response to a protest filed in our Office by Federal Lock & Safe, Inc. under request for proposals (RFP) No. 14-01-0001-98-R-15 for locksmith services under which FSS had been awarded a contract. Federal Lock had alleged in its protest, among other things, that the RFP was ambiguous and that the estimated quantities were not based on realistic and current usage information. At the time that Federal Lock filed its protest with our Office, Interior had already determined that it was necessary to reevaluate the quantity estimates for the solicitation, which was for the award of an indefinite-delivery, indefinite-quantity (ID/IQ) contract, and that the solicitation was unclear about what was actually being requested for several line items. Agency Report, Mar. 1, 1999, at 2. The agency determined to take corrective action and issued an amendment which provided definitions for certain contract line items (CLIN), revised minimum and/or maximum estimated quantities for approximately half of the CLINs and requested new best and final offers (BAFO) from competitive range offerors. *Id.* FSS contends that the solicitation was not ambiguous and that the amendment did not change the estimates significantly. FSS also objects that its prices have been disclosed to the competitive range offerors, placing FSS at a competitive disadvantage and improperly creating an auction.

We deny the protest.

The RFP, as amended through amendment No. 3, solicited proposals for providing labor, equipment and supervision to open, repair, replace or provide various types of locks, lock mechanisms, and cylinders at Interior buildings in Washington, D.C. RFP § C.1. The RFP contemplated award of an ID/IQ contract for a base year with four 1-year options. RFP § F.1 and amend. 3, at 2. At section B of the RFP, offerors were required to provide unit prices and extended prices for 48 CLINs and a total estimated price for the base year and each option year. Extended prices were to be calculated by multiplying the unit price by the estimated minimum quantity. The CLINs were divided into Category A and B items. Category A items included seven numbered supplies (locks, keys, special needs, additional key blanks, panic bars, Corbin/Ruswin replacement mortise casement and replacement cams for Ruswin mortise casement). Each of these items was broken into sub-items by type and/or manufacturer (e.g., locks were broken into types, such as desk cylinder and file cabinet, and into manufacturer, such as Yale, Schlage and Kwik Set). Category B line items included locksmith labor hours (regular and overtime) and maintenance labor hours (regular and overtime). RFP amend. 3. Award was to be made to the offeror whose proposal was determined to be the best overall value to the government, considering price and technical factors. RFP § M.

Five offerors submitted initial proposals. After discussions, three proposals, including FSS's and Federal Lock's, were determined to be in the competitive range. Agency Report, Mar. 1, 1999, at 1. On December 3, 1998, all three offerors submitted final proposal revisions and prices. Because Interior found the three proposals technically equal,¹ price became the determining factor. On December 10, the agency made award to FSS as the low-priced offeror. On December 15, the contracting officer sent award notifications, with copies of FSS's price schedule, to the other competitive range offerors. On the same day, the agency conducted a debriefing with Federal Lock. During the debriefing, Federal Lock argued that FSS's prices were unbalanced, that the agency's estimates were faulty, and that the solicitation contained certain ambiguities.

The contracting officer states that, after the debriefing, she "suspected that the stated minimum and maximum quantities contained in many line items of the RFP did not accurately reflect our actual requirements"² and that there were "continuing

¹Technical scores ranged from 97.25 to 100 points out of a possible 100 points.

²Federal Acquisition Regulation § 16.504(a)(1) provides that maximum quantity estimates for ID/IQ solicitations may be based on records of previous requirements and consumption but should be realistic and based on the most current information available. Although the estimates for indefinite-quantity contracts need not be precise, they must be established in good faith and accurately represent the agency's
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ambiguities in certain item descriptions” in the RFP. Contracting Officer’s Statement at 3rd unnumbered page. The agency believed that ambiguities were evidenced by significant differences in prices offered by the offerors for certain items. For example, prices from Federal Lock and FSS for the ASSA mortise lock (cylinder only) were \$1 and \$39, respectively, \$101 and \$18.50 for the Yale mortise lock (cylinder only), \$10 and \$25 for the special needs dead bolts, and \$.20 and \$3.50 for the replacement cams for Russwin casements. As a result of these price variations, the contracting officer concluded that there was confusion over terms and as to what Interior was actually requesting under some of the CLINs. For example, the agency notes that a “mortise cylinder” is a kind of lock while a “cylinder” is merely a component of a lock. These items may vary significantly in price. The contracting officer concluded that the solicitation did not reflect the agency’s minimum needs “given both the lack of support for the estimated quantities and the wide variations in prices on similar items” Id.

After Federal Lock protested to our Office, the agency suspended performance on the contract. In order to confirm her suspicions regarding the estimated quantities, the contracting officer examined data for the prior 2-year (1996) contract. Based on this data, the contracting officer revised a number of the quantity estimates and prepared definitions for “lock,” “cylinder,” “cylinder lock,” “dead bolt,” “key and knob lock,” and “mortise cylinder.” The revised quantity estimates and the definitions were incorporated into amendment No. 4, which was issued as corrective action on January 21, 1999. Offerors were given until January 27 to submit revised BAFOs.

FSS asserts that this corrective action was unwarranted and also objects that the agency “improperly released the entirety of FSS’s pricing proposal to all offerors in the competitive range at a time when it knew or should have known not to do so.” Protester’s Comments, Mar. 19, 1999, at 2. Specifically, FSS argues that the revised quantities set forth in amendment No. 4 are not significantly different from those in amendment No. 3 and that offerors “will not be able to offer materially different pricing from that which was originally proposed.” Amended Protest, Jan. 25, 1999, at 3. FSS argues that, of the 48 line items, “24 remained unchanged in the Amendment No. 4,” and, of the remaining 24 items, the minimum/maximum range was narrowed for 6 and quantities were revised only slightly for 18. Protester’s Comments, Mar. 19, 1999, at 13-14. Thus, FSS argues that, because quantities did not change significantly, pricing will not be materially different and offerors therefore were not prejudiced by not having the most current estimated quantities. To support its position, FSS also

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anticipated needs. Howard Johnson, B-260080, B-260080.2, May 24, 1995, 95-1 CPD 259 at 3.

reviewed the invoices for the prior 1996 contract and, while precise quantities for all CLINs could not be determined because of certain unclear invoice descriptions, prepared the following comparative table:

SUPPLIES	AMENDMENT 3 QUANTITY	AMENDMENT 4 QUANTITY	1996 ACTUAL QUANTITY
ASSA Mortise (cylinder only)	5-150	100-300	152
Desk Cylinder (diamond back)	5-250	15-50	55
Desk Cylinder (square back)	5-250	15-50	55
Medeco File Cabinet Lock	5-150	3-25	1
Yale Key and Knob Lock	5-50	15-50	4
ASSA Keys	100-600	300-600	500
Dead Bolts (Schlage, Yale, ASSA)-Cylinders	25-50	10-20	24
Locksmith Labor	8-950	200-450	398.25

Based on these figures, FSS argues that there is no basis for the agency to “assert that offerors have somehow been prejudiced by not having the most current estimated quantities, which in any event are not materially different from the ones originally presented to offerors.” Amended Protest, Jan. 25, 1999, at 3.

The protester also argues that the definitions provided in amendment No. 4 were not needed since they “are based upon the meaning commonly attached to the subject terms by those practiced in the art of locksmithing” Amended Protest, Jan. 25, 1999, at 4. FSS argues that these definitions are from published sources and have always been readily available. Moreover, FSS contends that the agency’s reliance on selective price disparities as evidence of ambiguity is arbitrary and irrational since the solicitation was clear as to requirements. Indeed, FSS notes that, in its responses to questions submitted by offerors, the agency in amendment No. 1 stated that the required ASSA mortise and Yale mortise locks were to be cylinders only and not the complete lock. FSS argues that the substantial price disparity on which Interior relies to support its assertion of solicitation ambiguity merely suggests that offerors ignored the plain terms of the solicitation.

Finally, FSS argues that the disclosure of its prices was improper, particularly where the agency suspected the need for corrective action but still released FSS’s pricing information.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs., LLC et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4; Rockville Mailing Serv., Inc., B-270161.2, Apr. 10, 1996, 96-1 CPD ¶ 184 at 4. It is not necessary for an agency to conclude that the protest is certain to be sustained before it may take corrective action; where the

agency has reasonable concern that there were errors in the procurement, even if the protest could be denied, we view it as within the agency's discretion to take corrective action. Patriot Contract Servs., LLC et al., supra. An agency may amend a solicitation, and request and evaluate another round of BAFOs where the record shows that the agency made the decision to take this action in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offeror. See PRC, Inc., B-233561.8, B-233561.9, Sept. 29, 1992, 92-2 CPD ¶ 215 at 3-4.

Here, there is no evidence of record which suggests that the corrective action was improper or that the agency acted other than in good faith. On the contrary, while the protester contends that the agency has not supported its determination to take the corrective action in amendment No. 4, the record, including the protester's own analysis of the historical data, supports the appropriateness of the agency's action.

Contrary to the protester's assertion, the estimated quantities provided in amendment Nos. 3 and 4 evidence that the revisions are significant, and that the amendment provides significantly more precise and current information with respect to anticipated needs. Twenty-seven CLINs in amendment No. 4 contained revised minimum quantities, including 23 CLINs in Category A and all 4 CLINs regarding labor requirements in Category B. Additionally, 30 CLINs (26 in Category A and all 4 in Category B) revised either minimum or maximum quantities. There were substantial quantity changes in several CLINs, including, for example, estimates for the ASSA mortise lock (cylinder only), which were revised from a minimum of 5 and a maximum of 150 to a minimum of 100 and a maximum of 300 and estimates for ASSA keys, which were revised from a minimum of 100 and a maximum of 600 to a minimum of 300 and a maximum of 600. Also, all three minimum estimates for file cabinet keys were decreased by half from 50 to 25. Finally, substantial estimated quantity revisions were included in each of the four CLINs regarding labor costs. For example, regular locksmith hours were revised from a minimum of 8 and a maximum of 950 to a minimum of 200 and a maximum of 450; overtime hours were revised from a minimum of 8 and a maximum of 150 to a minimum of 20 and a maximum of 45. The minimum regular maintenance hours were revised from 8 to 50; overtime maintenance hours were revised from a minimum of 8 and a maximum of 100 to a minimum of 5 and a maximum of 10. These revised estimates, which the agency states were established by using the invoices from the most recent 1996 contract are essentially confirmed by FSS's own summary of the data. For example, FSS calculated that 152 ASSA mortise locks (cylinders only) were ordered under the 1996 contract; yet, the original RFP estimated a minimum of 5 and a maximum of 150 for this requirement. The revised minimum/maximum estimates of 100 and 300 appear to provide a more accurate estimated quantity based on the historical data. Similarly, the actual number of ASSA keys required under the 1996 contract was 500. The original minimum/maximum estimates of 100/600 were revised to 300/600 to more precisely reflect the actual historical requirement. Finally, the actual regular labor hours for the locksmith were 398.25. The revised estimated minimum and maximum

of 200 to 400 hours more clearly reflect the actual 1996 requirement than the minimum/maximum estimate of 8/950 hours contained in the original solicitation.

Accordingly, the record supports the agency's determination that the original RFP did not provide the best available estimates based on current usage information and that the corrective action taken by issuing amendment No. 4 was warranted in order to provide offerors with more accurate estimated quantities for the supplies and services required. As the comparisons show, notwithstanding the protester's generalization regarding industry pricing practices, the revisions are significant in magnitude, which provides the agency with a reasonable basis to conclude that the estimate inaccuracies could have affected offeror pricing.

In addition, the agency had a reasonable concern that the original solicitation terms may have been misunderstood in view of the dramatic price differentials for several of the CLINs. First, as noted above, prices for several CLINs, including, for example, prices of \$101 and \$18.50 for the Yale mortise lock (cylinder only) were widely variant. Such prices can reasonably be interpreted to suggest that offerors did not have a similar understanding of the requirements, especially where, as here, the requirements were, for the most part, for common, branded, commercially available items. Moreover, while amendment No. 1 did state, as the protester notes, that the entries listed as ASSA mortise and Yale mortise "locks" were to be "cylinders" only, the schedule still referred to these requirements as "locks." Under these circumstances, we view as unobjectionable the agency's determination that corrective action was appropriate to clarify what it reasonably viewed as a potentially material solicitation ambiguity.

Finally, FSS also argues that, because offerors were informed of its prices, rescinding the original award and reopening the competition will foster an auction which will put FSS at a competitive disadvantage. Where, as here, the corrective action proposed by the agency is not improper, the prior disclosure of information in an offeror's proposal does not preclude the corrective action, and the request for BAFOs does not constitute an improper auction. Patriot Contract Servs., LLC et al., supra, at 7. This is because the possibility that the contract may not have been awarded based on a true determination of the most advantageous proposal has a more harmful effect on the integrity of the competitive procurement system than the fear of an auction; the statutory requirements for competition take priority over any possible regulatory constraints on auction techniques. Id.; Unisys Corp., B-230019.2, July 12, 1988, 88-2 CPD ¶ 35 at 5. Here, although only FSS's prices have been disclosed, we note that under amendment No. 3 there appeared to be confusion as to what the agency was actually requesting under several CLINs, so that the significance of any of the pricing is questionable. Moreover, since the award was made to FSS on the basis of price, all offerors were aware in any event that their total prices were higher than FSS's total price, and FSS has not provided any evidence that it was somehow competitively prejudiced by not being apprised of the specific prices that were higher than its own. Finally, as discussed above, the agency made significant changes to the minimum

and/or maximum estimated quantities for many line items, which may render much of the disclosed pricing meaningless. Accordingly, notwithstanding the disclosure of FSS's pricing, the corrective action taken by the agency is unobjectionable.

The protest is denied.

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