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Decision

Matter of: Systems Integration & Management, Inc.

File: B-402785.2

Date: August 10, 2010

Cynthia Malyszek, Esq., Malyszek & Malyszek, for the protester.
J. R. Cohn, Esq., United States Marine Corps, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of 3-month sole-source task order for interim services placed against Federal Supply Schedule (FSS) contract is denied where the services were urgently required and agency reasonably concluded that following the applicable FSS competitive ordering procedures would result in unacceptable delay.

DECISION

Systems Integration & Management, Inc. (SIM), of Arlington, Virginia, protests the Marine Corps's issuance of a 3-month task order to Management Consulting, Inc. (MANCON), of Virginia Beach, Virginia, for electronic systems and equipment maintenance services in support of weapons training ranges at Marine Corps Base Camp Lejeune.

We deny the protest.

The protest here follows an earlier protest by SIM, objecting to the issuance of a 2-year (1 base plus 1 option year) task order for the same services to MANCON under request for quotations (RFQ) No. M67001-10-Q-0050. We dismissed that protest as academic after the agency notified us that it was terminating MANCON's task order and resoliciting the requirement. See *Systems Integration & Mgmt., Inc.*, B-402785, May 26, 2010. On May 20, the same day that it terminated the 2-year task order, the agency issued a 3-month task order to MANCON to provide services while it conducted the resolicitation.

The protester argues that the agency improperly issued the short-term order to MANCON on a sole-source basis. SIM contends in this connection that MANCON is not the only firm capable of furnishing the needed services.

The 3-month task order, which has a value of \$71,920, was placed against MANCON's Federal Supply Schedule (FSS) contract. Federal Acquisition Regulation (FAR) § 8.405-6 exempts orders placed under Federal Supply Schedules from the competition requirements of FAR Part 6, but requires that an ordering activity "justify its action when restricting consideration of . . . schedule contractors to fewer than required in 8.405-1 or 8.405-2."¹ FAR § 8.405-6(a)(1). Circumstances justifying such a restriction include where an urgent and compelling need exists and following the ordering procedures would result in unacceptable delays. FAR § 8.405-6(b)(3). Where an ordering activity restricts competition on the basis of urgent and compelling need, the contracting officer is required to document the circumstances in writing. FAR § 8.405-6(c), (f).

Here, the contracting officer determined that the maintenance services were urgently required, and that MANCON, which had been providing the services for the preceding 2 months, had the required personnel in place.² The contracting officer noted that conducting a competition for the interim services would require the Marine Corps to prepare and publish an RFQ, wait a reasonable time for vendors to respond, and evaluate the responses, which would take a period of weeks. Agency Report, Tab 9, Limited Sources Justification, at 1. According to the contracting officer, "the only reasonable solution to avoid an interruption in the services [was] to award a short-term (90 days) bridge contract to the current incumbent, MANCON, without competition, until a properly competed contract [could] be awarded." Id.

The protester disputes the agency's finding, arguing that issuance of a task order to MANCON was not the only means by which the agency could have avoided an interruption in services. SIM contends that it too could have begun performance immediately. The protester points out in this connection that it was performing the services prior to issuance of the now-terminated task order to MANCON, and that all of the MANCON employees were previously SIM employees.

We agree with the protester that the record does not demonstrate that MANCON is the only firm capable of performing the services without interruption; we nonetheless think that issuance of the order to MANCON was unobjectionable given the agency's findings that the services were needed immediately and that conducting a competition for them would take a period of weeks. As noted above, FAR

¹ 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).

² SIM filed an agency-level protest prior to protesting to our Office, and the agency did not suspend performance. At the time the agency terminated the task order, MANCON had already been performing 72 days.

§ 8.405-6(b)(3) specifically authorizes restricting competition where, as here, an urgent and compelling need exists and following the FSS ordering procedures would result in unacceptable delays. To the extent that the protester is disputing the agency's judgment as to the time period required to conduct a competition for the interim services, a protester's mere disagreement does not show that the agency's judgment was unreasonable. Richard Bowers & Co., B-400276, Sept. 12, 2008, 2008 CPD ¶ 171 at 2. Further, to the extent that SIM is arguing that it, not MANCON, should have been considered the incumbent contractor given that the task order issued to MANCON was terminated--and that, as the incumbent, it should have received the sole-source order for interim services--even assuming that the agency might reasonably have issued an order for the interim services to the protester, this does not demonstrate that it was unreasonable for it to issue an order to MANCON instead.

SIM also argues that the urgency here was the result of a lack of advance planning on the part of agency officials in that there would have been no need for the agency to terminate the task order issued under the RFQ and resolicit the requirement--and thus no need for the 3-month order for services during the interim period while the resolicitation is conducted--had the agency engaged in adequate planning prior to issuing the RFQ. We are not persuaded by the protester's argument; we do not consider an immediate need for services that arises as a result of an agency's implementation of corrective action in response to a protest to be the result of a lack of advance planning. See Chapman Law Firm Co., LPA, B-296847, Sept. 28, 2005, 2005 CPD ¶ 175 at 3; Computers Universal, Inc., B-296536, Aug. 18, 2005, 2005 CPD ¶ 160 at 3.

Finally, the protester points out that the limited sources justification document was not executed until June 7, 2010, approximately a week after it filed its protest with our Office (and more than 2 weeks after the bridge task order was issued to MANCON). FAR § 8.405-6 requires that the agency document in writing the basis for its decision to limit competition, but it does not require that the justification be executed prior to award. Moreover, where circumstances sufficient to support a justification are present, the lack of a contemporaneous written justification is not a sufficient reason for sustaining a protest. See General Elec. Med. Sys., B-231342, Aug. 26, 1988, 88-2 CPD ¶ 185 at 3.

The protest is denied.

Lynn H. Gibson
Acting General Counsel