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Decision

Matter of: Asset Protection & Security Services, LP

File: B-406474.2

Date: July 17, 2012

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DIGEST

Protest that agency improperly rejected quotation in Federal Supply Schedule (FSS) acquisition conducted under Federal Acquisition Regulation (FAR) part 8.4 is denied where protester's FSS contract did not include all items and rates required by the solicitation.

DECISION

Asset Protection & Security Services (APSS), LP, protests the exclusion of its quotation from consideration under request for quotations (RFQ) No. HSCEDM-12-Q-00001, issued by the Department of Homeland Security, Immigration and Customs Enforcement, for detention officer services in the southwest United States.

We deny the protest.

The agency issued the RFQ via the General Services Administration (GSA) eBuy system on January 6, 2012, under Federal Acquisition Regulation (FAR) Subpart 8.4, to vendors holding GSA Federal Supply Schedule (FSS) 84, Special Item Number (SIN) 246-54 (protective service occupations) contracts. The RFQ contemplated the establishment of a single blanket purchase agreement for a base year and four option years, for detention officer services in the cities of Ventura, Los Angeles, San Bernardino, Mira Loma, Santa Ana, Lompoc, San Francisco, San Jose, Bakersfield, Stockton, Fresno, and Bakersfield, in California, and Phoenix and Tucson, in Arizona. The RFQ included the following instructions:

All services performed under this request for quote must be provided by a vendor or vendors who possess a current GSA contract. Any quotation received that proposes services be provided in an "open market" arena will be deemed unresponsive; thus, ineligible for award. All quotes shall include the contractors and subcontractors Name(s), GSA Schedule Number, TIN, DUNS, CAGE code and a brief description of the services to be performed [and] . . .

The price quotation for each Sub-CLIN shall be in accordance with the labor categories and rates contained in the GSA Schedule 84--SIN 246-54. The Government fully expects the Contractor to quote discounted rates.

RFQ, Attachment B, at 1, 3. The RFQ also contained a late quotations clause stating that "[q]uotes received after the due date and time will not be considered."¹ RFQ, Attachment B, at 3. The RFQ closed on February 10, 2012.

The agency received five timely quotations in response to the RFQ, including a quotation submitted by APSS. On February 15, the agency contracting specialist contacted APSS and requested that APSS "[p]lease provide proof of Detention Officers pricelist for Arizona and California on GSA contract." Protest, Tab D, at 2. APSS responded that it would modify its GSA contract to add the detention officer labor category. On February 17, the agency informed APSS that its quotation had been eliminated from the competition because its GSA FSS contract did not include all items required by the RFQ, at the time that APSS submitted its quotation. It is undisputed that as of the closing time of the RFQ, APSS' FSS contract did not include the detention officer labor category.²

APSS argues that the agency had no basis to eliminate its quotation because the RFQ did not explicitly require all labor categories and prices to be on an offeror's FSS contract prior to the closing date. APSS asserts that it should have been

¹ Generally, late quotations may be considered up to the time of issuance of the order, because an RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. Rather, the government's purchase order represents an offer that the vendor may accept through performance or by a formal acceptance document. M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3. However, an RFQ may contain a late quotations clause to expressly limit the agency's consideration of late quotations. Id.

² GSA approved a modification to APSS' FSS schedule contract incorporating the labor category and the required pricelist rates on February 27.

allowed to update its FSS contract at any time prior to the issuance of a task order, and that such a modification would not violate the RFQ's late quotation provision.

As a general matter, FSS procedures provide agencies a simplified process for obtaining commonly used commercial supplies and services, FAR § 8.401(a), and, although streamlined, satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3) (2006); FAR § 6.102(d)(3). However, non-FSS products and services 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. 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. Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n.1; Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 4; CourtSmart Digital Systems, Inc., B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 5; see ATA Def. Indus. v. United States, 38 Fed. Cl. 489 (1997).³

Here, as noted above, the RFQ required that the vendor's price quotation for each city (sub-CLIN) be in accordance with the labor categories and rates contained in GSA Schedule 84, SIN 246-54. The RFQ also cautioned that "[a]ll services performed under this request for quote must be provided by a vendor or vendors who possess a current GSA contract, and the RFQ contained a late quotations clause, expressly requiring that quotations be submitted, and final, by the closing time of the RFQ. We also note that GSA Schedule 84, SIN 246-54, provides the following information for adding locations, and incorporating new pricing data under a vendor's FSS contract:

Information on Receiving Task Orders for new locations under SIN 246-54

The labor rates established in any contract for SIN 246-54 resulting from any offer against this Solicitation [are] subject to the limitations of scope for the applicable locations and Department of Labor wage determinations awarded under the contract. 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*

³ The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000. See CourtSmart Digital Systems, Inc., *supra*, at 5. The items in issue here exceed the threshold amount.

Task Ordering Agency's Request for Quotations by the closing date of the RFQ.

Agency Report (AR), Tab 10, at 5 (emphasis added).

In a related case concerning the same procurement and solicitation, we concluded that the agency reasonably excluded from consideration a vendor's quotation where the vendor, like APSS, had included labor categories or prices that were not then on its underlying FSS schedule contract. See Spectrum Security Servs., Inc., B-406474, June 13, 2012, 2012 CPD ¶ 183 at 4-5. In reaching this conclusion we noted that the vendor had not quoted rates "in accordance with" its FSS contract as required by the RFQ--the rates were not actually on the firm's FSS contract. We also noted that the vendor's Schedule 84, SIN 246-54, FSS contract, like APSS's contract, specifically advised that it "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 10, at 5 (emphasis added). The vendor's FSS contract, like APSS's FSS contract, did not comply with this instruction. As in Spectrum, we conclude that the agency reasonably excluded APSS's proposal from further consideration upon recognizing that APSS had quoted items and rates not then found on its FSS schedule.

APSS maintains that its quotation was not improper, asserting that the Schedule 84, SIN 246-54, information statement concerning task orders for new locations is not binding, and that the RFQ in this case did not require offerors to be "compliant with all terms and conditions in their GSA Schedule Contracts." Protester's Final Comments, at 2. We disagree.

As explained above, 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. Science Applications Int'l Corp., supra. This is necessarily the case, because while FSS procedures satisfy the requirements for full and open competition, FSS procedures may not be used to procure items not on an underlying FSS schedule contract. Such items must be purchased in accordance with otherwise applicable procurement laws and regulations, including those requiring the use of full competitive procedures. Symlicity Corp., supra.

Accordingly, responses to an RFQ issued pursuant to FAR Subpart 8.4 must comply with terms, conditions, and procedures set forth in an underlying FSS schedule contract for the order to meet the requirements of full and open competition. Where a quotation is not consistent with an underlying FSS schedule contract, the agency may reasonably exclude the quotation upon discovery of that fact. Spectrum Security Servs., Inc., supra. In this case, when the agency discovered that the protester quoted items not incorporated in its underlying FSS

schedule contract, it was not unreasonable for the agency to exclude that quotation from further consideration, notwithstanding the protester's pledge to modify its FSS schedule contract.

The protest is denied.

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General Counsel