



## Decision

**Matter of:** Phoenix Environmental Design, Inc.

**File:** B-414743

**Date:** August 30, 2017

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C. Chad Gill, for the protester.  
Craig T. Donovan, Esq., Department of the Interior, for the agency.  
Nora K. Adkins, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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### DIGEST

1. Protest alleging that the agency failed to follow the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 in issuing a request for quotations to federal supply schedule (FSS) contract-holders is denied where the agency conducted market research and issued the solicitation in accordance with the relevant FAR provisions.
  2. Protest challenging the issuance of a solicitation to both FSS 51V and 73 contract-holders is denied where the agency's market research demonstrated that each schedule included vendors that could provide the items.
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### DECISION

Phoenix Environmental Design, Inc., of Newman Lake, Washington, protests the terms of request for quotations (RFQ) No. 1193852, which was issued by the Department of the Interior, U.S. Fish and Wildlife Service, for herbicide and related products. The protester alleges that the agency violated multiple provisions of Federal Acquisition Regulation (FAR) subpart 8.4 and improperly issued the solicitation to holders of General Services Administration (GSA) Federal Supply Schedule (FSS) 51V--hardware superstore contracts.

We deny the protest.

### BACKGROUND

On April 5, 2017, the U.S. Fish and Wildlife Service's Mid-Columbia River National Wildlife Refuge Complex issued an internal program purchase request to the agency's contract specialist for the purchase of various herbicides and adjuvants to maintain the

bare ground of roads and firebreaks, and assist in the maintenance and rehabilitation of native habitats with the complex. Agency Report (AR), Tab 4, Program Purchase Request, at 1-2. In response to the request, the contract specialist conducted market research, which included a review of prior sources and government databases. Id., Tab 5b, Acquisition Planning Memorandum, at 1.

Based on the agency's prior purchase history, the contract specialist researched the GSA Advantage online portal to locate schedule 51V--hardware superstore contract-holders providing herbicides. Id. The contract specialist located 37 vendors providing herbicides on schedule 51V. Id.; Tab 7a, Market Research FSS 51V, at 1. Among the 37 vendors, the contract specialist found most, but not all of the brand name items requested on the vendors' FSS contracts. AR, Tab 5b, Acquisition Planning Memorandum, at 1. Thus, the agency decided to issue a brand name or equal RFQ to permit vendors to submit quotations for equivalent items. Id.

On May 15, the agency posted the RFQ to the GSA's electronic RFQ system, e-Buy, under FSS 51V SIN 341 100 (lawn and garden equipment, machinery, implements, and products) and SIN 105 002 (hardware store, home improvement center, or MRO-catalog). Contracting Officer Statement at 1. Also on May 15, the agency issued RFQ modification No. 1, which added schedule 73--food service, hospitality, and cleaning SIN 507 9 (insect repellent) to the solicitation.<sup>1</sup> RFQ mod. No. 1, at 1.

Phoenix, a schedule 73 contract-holder, contacted the agency to present its concerns with various aspects of the solicitation. In response to the concerns of Phoenix, the agency issued modification No. 2 on May 16 to clarify the brand name or equal specifications of the solicitation. RFQ mod. No. 2. On May 17, the agency modified the RFQ a final time to address the remainder of Phoenix's concerns. RFQ mod. No. 3.

The final RFQ requested 11 herbicides and surfactants. Id. The solicitation provided that a vendor "shall supply the requested amounts of the following herbicides and surfactant **OR EQUAL PRODUCTS**; to be considered equal, products must have the identified '**SALIENT CHARACTERISTICS**' and be suitable for the specific application uses." Id. (emphasis in original). The RFQ additionally notified vendors that "[a]ll product and services offered must be on your current GSA schedule contract." Phoenix Comments at 2. Vendors were also warned "not [to] include any open market items in their offer." Id. at 1.<sup>2</sup> The modified RFQ extended the due date for receipt of quotations to May 30.

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<sup>1</sup> The agency added schedule 73 because a schedule 73 contract-holder had previously contacted the agency to express interest in competing for Mid-Columbia River National Wildlife Refuge Complex contracts. AR, Tab 5b, Acquisition Planning Memorandum, at 1.

<sup>2</sup> The agency did not provide a copy of the RFQ instruction section. The agency does not however dispute the protester's quotation of these passages. See Agency Response to Phoenix Comments at 1.

On May 30, Phoenix filed its protest with our Office.

## DISCUSSION

Phoenix primarily contends that the agency failed to comply with FAR subpart 8.4 procedures when issuing the solicitation. The protester also objects to the agency's inclusion of schedule 51V--hardware superstore contract-holders. While we do not address each of the protester's arguments, or variations thereof, we have considered all of the allegations and find that none provide a basis to sustain the protest.<sup>3</sup>

The FSS program directed and managed by GSA gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.402(a). In FSS buys, as in other procurements, the determination of what the agency needs, and which products or services meet those needs is within the agency's discretion; we will not sustain a protest in this area unless the determination lacks a reasonable basis. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 4. Agencies may only place orders with a vendor whose schedule contract contains the goods or services required to meet the agency's need under a solicitation. Lockmasters Sec. Institute, Inc., B-299456, May 21, 2007, 2007 CPD ¶ 105 at 4.

Phoenix alleges that the agency failed to comply with the requirements of FAR subpart 8.4. Phoenix primarily argues that the agency's market research and use of the schedules is improper because there are no vendors who have all items on their FSS contract. In this regard, the protester alleges that the relevant FAR provisions require the agency to determine whether each and every item solicited is available on at least three vendors' FSS prior to issuing the solicitation. In response, the agency asserts that it reasonably believed that there were vendors that could fulfill the brand name or equal requirement based on market research.

When placing an order under the FSS an agency must conduct acquisition planning. FAR § 8.404(c)(1). The FAR also provides that prior to placing an order exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, an ordering activity must: (1) consider reasonably available information about the supply or service offered by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, (2) review the catalogs or pricelists of at least

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<sup>3</sup> For example, the protester alleges that the agency violated FAR § 8.405-6--limiting sources. We find that the protester has not provided a valid basis of protest because this provision is only applicable when the agency has limited sources of competition. Here, by including both schedule 51V and 73 contract-holders, the agency has increased, not limited, competition.

three schedule contractors, or (3) request quotations from at least three schedule contractors.<sup>4</sup> FAR § 8.405-1(c).

Here, the agency reviewed multiple schedules based on historical information and requests from current vendors in accordance with FAR § 8.404(c)(1). AR, Tab 5b, Acquisition Planning Memorandum at 1. The agency also determined that while not all brand name items were available on the vendors' FSS contracts, equivalent products may be available to meet the agency's needs for some items. Id. Based on the results of the market research the agency requested quotations from multiple schedule-holders in accordance with FAR § 8.405-1(c). While the protester disagrees with the agency's conclusions, we find that the agency had a reasonable belief that vendors could offer brand name or equal items to meet the agency's needs. Moreover, contrary to the protester's allegations, FAR subpart 8.4 procedures do not require an agency to determine whether each and every item solicited is available on at least three vendors' FSS prior to issuing the solicitation. See FAR § 8.405-1(c). Accordingly, we find no basis to conclude that the agency violated the procedures of FAR subpart 8.4.<sup>5</sup>

Next, Phoenix alleges that the agency's use of schedule 51V was unreasonable because herbicide purchases are not authorized on this schedule. Phoenix asserts that the only schedule on which an agency may purchase herbicides is schedule 73, with the product service code (PSC) of 6840--pest control agents and disinfectants.<sup>6</sup> We find no basis to sustain the protester's allegations.

PSCs describe products, services, and research and development purchased by the federal government. AR, Tab 22, Federal Procurement Data System Product and Service Codes Manual, Aug. 2015 Ed., at 5. These codes indicate "what" was bought for each contract action reported in the Federal Procurement Data System. Id. PSCs are used by agencies to record the products and service being purchased by the federal government. Id. at 6.

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<sup>4</sup> The protester does not dispute the agency's determination that the requirement would exceed the micro-purchase threshold but not exceed the simplified acquisition threshold. See AR, Tab 8, Market Research Cost Inquiry, at 1. Thus, FAR § 8.405-1(c) is the applicable provision.

<sup>5</sup> The protester also contends that the solicitation violates FAR § 8.402(f) because it contains open market (not FSS) items. While we agree with the protester that FAR § 8.402(f) prohibits the agency from adding open market items to a FSS purchase order unless all applicable acquisition provisions are followed, as the procurement at issue here is still in the solicitation phase and an order has not been issued, the protester's allegations are premature.

<sup>6</sup> The GSA product service code manual lists code 6840 under group 68--chemicals and chemical products--and includes: insect repellents, fungicides, insecticides, rodenticides, and weed killers. AR, Tab 22, Federal Procurement Data System Product and Service Codes Manual, Aug. 2015 Ed., at 197-8.

The protester alleges that the agency was required to solicit the herbicide requirement solely from schedule 73 holders because only schedule 73 SIN 507 9 (insect repellent) lists the proper code for herbicides, which is PSC No. 6840 (pest control agents and disinfectants). In response, the agency agrees that PSC code 6840 is the proper PSC for herbicides and that this code is listed as the primary PSC for schedule 73 SIN 507 9. The agency argues however that the protester incorrectly assumes that schedule 73 is the only schedule an agency may use when procuring herbicides. In this regard, the agency notes that schedule 51V includes PSC group 68, chemicals, which includes PSC 6840.

As discussed above, agencies have broad discretion in determining how to meet their needs and our Office will not substitute our judgment for the agency's. Draeger Safety, Inc., supra. The agency here concluded that the herbicides and related products could be provided under schedule 51V and 73. In this regard, the agency had previously ordered the items under schedule 51V and a schedule 73 vendor contacted the agency to request an opportunity to compete. The agency's market research also uncovered multiple vendors with herbicides on schedule 51V. Although the protester disagrees with this assessment, we do not believe that the protester has provided a reasonable basis to challenge the agency's determination. In this regard, the protester has failed to demonstrate why a PSC designation, which is primarily used for reporting purposes, would prohibit the agency from soliciting products from a schedule which contains the requested items.

The protest is denied.

Susan A. Poling  
General Counsel