



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kaset International

File: B-255084

Date: February 7, 1994

Terri L. Voss, Esq., Washington Management Group, for the protester.

Vera Meza, Esq., and Capt. Jerry R. Krimbill, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's training course does not meet requirements set forth in a request for quotations (RFQ), issued in conjunction with a multiple award Federal Supply Schedule contract, is denied where the record shows that the awardee's schedule contract included courses meeting the requirements of the RFQ.

2. Under the price reduction clause incorporated into every Federal Supply Schedule (FSS) contract, an FSS supplier may issue a price reduction at any time and by any method.

DECISION

Kaset International protests the award of a delivery order to Sterling Institute, Inc. by the Department of the Army under a request for quotations (RFQ) for a "Train the Trainer" Empowerment Training Course to be given at the Army Reserve Personnel Center (Personnel Center) in St. Louis, Missouri. The agency made the award under a General Services Administration (GSA) nonmandatory Federal Supply Schedule (FSS) contract. Kaset contends that the training course offered by Sterling did not meet performance requirements set forth in the RFQ and that the agency improperly allowed the awardee to reduce its price.

We deny the protest.

On September 14, 1993, the contracting officer received a request from the Personnel Center for "Train the Trainer" empowerment training courses to be conducted at the

Personnel Center from September 27 through September 30.¹ The courses were to train 20 Personnel Center employees who would then train approximately 2,000 additional employees. The request required 20 train-the-trainer kits, and 2,000 participant kits. The Personnel Center identified six training requirements and three vendors on the FSS, including Kaset and Sterling, that supplied empowerment courses.

Although the Personnel Center identified Kaset as the only vendor that satisfied its requirements, the contracting office concluded that a sole-source award could not be justified. Instead, the contract specialist consulted the applicable FSS to determine which courses met the agency's needs and then contacted two of the three vendors identified by the Personnel Center, Kaset and Sterling, to verify their prices.² Kaset provided an oral quote of \$155,988, a price identical to its FSS price. Sterling informed the contract specialist that it was going to seek permission from GSA to quote a lower rate than set forth in its current FSS and, on September 21, submitted an oral quotation of \$138,100.³ Sterling confirmed this price by letter the same day.

Based on the requirements submitted by the Personnel Center and the information supplied by Kaset and Sterling, the contract specialist believed that the contract should be awarded to Sterling. Nonetheless, representatives of the Personnel Center expressed the concern that Sterling was not offering "empowerment" training and prepared a list of 13 performance requirements. The RFQ, which included those performance requirements as a statement of work, then was issued to Sterling and Kaset to determine if they had courses on the FSS that met the agency's needs.

Each of the offerors submitted quotations in response to the RFQ. With its quotation, Sterling submitted a description of its course. Based on these submissions and the FSS, the contracting officer and the contract specialist determined that Sterling's product met the agency's requirements at the lowest price and issued a delivery order to Sterling on September 23.

¹The Personnel Center does not have a contracting activity. Rather, the Charles Melvin Price Support Center contracting office is responsible for procuring goods and services for the Personnel Center.

²Although a contract specialist tried repeatedly to contact the third vendor, she was unsuccessful.

³GSA administers and oversees the FSS program. See Federal Property Management Regulations (FPMR), 41 C.F.R. § 101-26.402-1 (1993).

Kaset challenges the compliance of Sterling's course with three of the RFQ performance requirements and argues that "[t]he only way the agency could consider Sterling's proposal to be technically acceptable was if the agency allowed Sterling to change its course from what was on the GSA schedule."

In ordering supplies from an FSS, the procuring agency generally is required to place orders with the schedule contractors offering the lowest delivered price for products meeting the needs of the government. Federal Acquisition Regulation (FAR) § 8.405-1. The determination of the agency's minimum needs and which product on the FSS meets those needs is properly the agency's responsibility; thus, we will only examine the agency's assessment of technical acceptability to ensure that it had a reasonable basis. See National Mailing Sys., B-251932.3, Aug. 4, 1993, 93-2 CPD ¶ 78; American Body Armor & Equip., Inc., B-238860, July 3, 1990, 90-2 CPD ¶ 4.

As a preliminary matter, our review of the FSS materials and the quotations of Kaset and Sterling indicates that neither firm's course exactly matches the course described in the RFQ. The performance requirements prepared by the Personnel Center explicitly described a "Train-the-Trainer" course which would train 20 agency employees "in how to be trainers," so that those individuals could subsequently train approximately 2,000 other agency employees. The courses offered by Kaset and Sterling, however, do not appear to have been designed for this purpose. Rather, both firms' courses focus on training managers and employees in empowerment, rather than on training trainers to teach empowerment. Since neither course was exactly what the agency originally sought, the agency appears to have accepted this change in emphasis and concluded that once a manager or employee is trained in empowerment, he or she can subsequently train others.

Turning to the protester's specific contentions, Kaset first challenges Sterling's compliance with paragraphs 2 and 4 of the RFQ, which required that the course provide empowerment training for supervisors and employees. Kaset argues that Sterling's course states that its audience is "all levels of managers and supervisors," and does not mention that it is geared towards employees.

Sterling's quotation and its FSS state that its course consists of two programs from its "Profiles in Government Leadership" library. One program, "Building Quality and Commitment," is designed for supervisors/managers; the other, "Taking Initiative and Improving Service," is designed for employees. We find that the agency properly considered this information and thus reasonably concluded

that Sterling's course is designed for both managers and employees.

Second, Kaset challenges Sterling's compliance with paragraph 5 of the RFQ which requires that the course provide:

" . . . a clear understanding [of] the differences [between] delegation and empowerment, and the benefits of empowering for customers, managers and employees. A clear definition of empowerment must be defined as the freedom to draw upon individual knowledge, skills, and abilities to provide superior customer service."

According to Kaset, the Sterling course does not adequately focus on the concept of empowerment since empowerment is only one of five course objectives and Sterling's course gives "no indication of the relationship between empowerment and customer service" as required by paragraph 5 of the RFQ. Rather, according to the protester, Sterling's course only focuses on the concept of empowerment "in the context of motivating people."

Sterling's quotation stated that managers/supervisors would learn about "[p]aths to [e]mpowering [e]mployees," including examining their employees' empowerment priorities. In addition, information in Sterling's FSS states that the "Building Quality and Commitment" program enables managers to "analyze the situational factors that should be considered in determining whether to reach a decision independently, participate with employees, or delegate." Similarly, the program excerpts for Sterling's "Taking Initiative" program specifically address "empowerment," stating that "[t]his seminar prepares employees to take the baton of empowerment" and learn, among other things, the steps to self-empowerment, to take initiative, and procedures that help or hinder initiative and empowerment. Both of the Sterling programs, which are part of the course purchased by the agency, focus on empowerment, and we find that Kaset has failed to show that Sterling's course does not meet this requirement.

As to Kaset's complaint that Sterling's course gives "no indication of the relationship between empowerment and customer service," the information provided by Sterling specifically states that its course has been used to "build the skills required to deliver effective customer service in government agencies" and that the course provides for "improved empowerment, participation, involvement, and resulting improved customer service. . . ." Additionally, the managers' program is to show how to identify customers and the requirements and quality indicators of customers,

and how an organization can improve quality and increase readiness to meet customer requirements. Again, Kaset has not shown that the agency acted unreasonably in concluding that Sterling's course would examine the relationship between empowerment and customer service.

Third, Kaset asserts that the awardee's course fails to comply with paragraph 11 of the RFQ, which requires that the course:

" . . . address the levels of empowerment, a decision tree for examining negative consequences of empowerment, an assessment table for determining an employee's level of confidence and some form of matrix for determining an employee's level of empowerment. All of this is for internal self evaluation."

Contrary to Kaset's assertions, the record shows that Sterling's course contains internal self evaluation materials for employees. Information provided by Sterling shows that employees use a 9-point organizational exercise to assess the management practices of their organization and employees are given a self-assessment inventory to identify their own levels of control/empowerment. The employees' program also includes analytical models describing the "cause-effect paths that lead to powerlessness on the job or to empowerment." Similarly, the manager's course offers a risk-taking model for dealing with the risks or negative consequences of empowerment and helps managers develop a systematic approach to assessing whether to reach decisions independently or in participation with employees. Additionally, the managers learn a systematic approach to assessing the impact of their managerial practices and style on the motivation and productivity of their subordinates. Since the course that is available from Sterling under its FSS contract includes numerous self evaluation inventories and assessments, we find that Kaset has failed to show that Sterling's course does not meet this requirement.

Further, there is nothing in the record to suggest that Sterling revised its FSS course to meet the Personnel Center's requirements. The protester bases this argument on the statement in Sterling's quotation that its course is "government specific," and apparently assumes that Sterling revised its course specifically for the Personnel Center.

While Sterling did state that its course is "government specific," its quotation also stated that the course is "from our library of programs entitled 'Profiles in Government Leadership'," which Sterling says have been used by numerous government agencies. The "Profiles in Government Leadership" programs, specifically, "Building

Quality and Commitment" and "Taking Initiative," are outlined in Sterling's GSA schedule. There is nothing in the record to support the protester's allegation that Sterling offered anything other than its FSS course.

Kaset also alleges that the agency did not communicate to Kaset that offerors could lower their prices. The protester argues that it "reasonably believed that . . . the previously negotiated GSA price" was applicable for each offeror.

GSA annually enters into a multitude of FSS contracts. The prices offered by the contractors are filed with GSA and price lists, in conformity with their offers, are distributed by the contractors to the various government agencies for use in purchasing the items. See Berntsen, Inc., B-242704, May 13, 1991, 91-1 CPD ¶ 461; Microcom Corp., B-186057, Nov. 8, 1976, 76-2 CPD ¶ 385. Contractors are allowed to reduce prices during the schedule contract period provided an equivalent price reduction is applied for the duration of the contract; accordingly, a price reduction clause is included in all schedule contracts. See FPMR § 101-26.408-5; Berntsen, Inc., supra. As a result of a price reduction, a contractor may be able to better its competitive position during the contract period; however, all contractors have the same opportunity to issue a price reduction. Berntsen, Inc., supra.

Here, the record shows that the awardee sought and was given approval by GSA to lower its price. Since a contractor may offer a price reduction at any time and by any method, even without approval by GSA, the fact that Sterling offered a price reduction after learning of the Personnel Center's requirements is not objectionable. See id.

Finally, Kaset argues that the contracting office was required to "obtain technical approval of the contractor from the end user," in this case, the Personnel Center. Kaset alleges that the contracting office did not obtain this approval and that the end user repeatedly told contracting personnel that the Sterling course did not meet its requirements and recommended award to Kaset. According to Kaset, the contracting office does not possess the necessary technical knowledge to assess the offers and the Personnel Center "should have been given the opportunity to choose the vendor."

The fact that "technical approval" was not received from the end user provides no basis, standing alone, to challenge the

contracting office's selection of Sterling.⁴ On the contrary, we see no basis to conclude that the end user's purported "vendor preference" should control the award decision where, as here, the record supports the contracting office's conclusion that the awardee's course satisfied the agency's requirements as expressed in the RFQ. See Enstrom Helicopter Corp., B-253014, Aug. 13, 1993, 93-2 CPD ¶ 189; Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133 (source selection officials are not bound by the recommendations or evaluation judgments of lower-level evaluators even though the working level evaluators may normally be expected to have the technical expertise required for such evaluations). In fact, given our finding that the contracting office reasonably concluded that Sterling would meet the agency's needs, award properly could be made only to Sterling, the lower priced vendor. See FAR § 8.405-1 (agencies generally are to place orders with the FSS contractor offering the lowest price available unless there is specific justification for ordering a higher priced item).

The protest is denied.

Robert P. Murphy
 for Robert P. Murphy
 Acting General Counsel

⁴Although Kaset maintains that the end user must approve the award, Kaset cites no agency regulation or other authority for this requirement. According to the agency, the contracting division is not required to obtain approval from end users before issuing a delivery order.