



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Major Contracting Services, Inc.

File: B-406980

Date: October 10, 2012

William L. Sasz, Esq. for the protester.

MAJ John C. Dohn, Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that solicitation improperly restricts competition in violation of the Competition in Contracting Act by consolidating portable latrine waste disposal services with waste disposal services for permanent latrines is denied where the record supports the agency's conclusion that combining the requirements is reasonably necessary to meet the agency's needs.

DECISION

Major Contracting Services, Inc. (MCS), of Colorado Springs, Colorado, protests the consolidation of requirements for sanitary waste disposal services for portable latrines with disposal services for permanent latrines (including septic tanks) at Fort Leonard Wood, Missouri, under request for proposals (RFP)

No. W911S7-12-R-0015 issued by the Department of the Army. MCS argues that the consolidation improperly restricts competition in violation of the Competition in Contracting Act (CICA).

We deny the protest.

BACKGROUND

On March 1, 2012, the Army issued a solicitation, set aside for small business concerns, for portable latrine and permanent latrine (including septic tank) waste

disposal services located at Fort Leonard Wood.¹ On March 14, prior to that solicitation's closing date, MCS filed a protest with our Office arguing that the solicitation improperly restricted competition in violation of CICA, 10 U.S.C. §§ 2305(a)(1)(A) (2006), by "bundling" under one contract the portable latrine waste disposal services and the permanent latrine waste disposal services. Subsequently, the agency cancelled the solicitation and we dismissed the protest as academic. See Major Contracting Services, Inc., B-406513, April 17, 2012.

On May 1, the agency published in FedBizOpps a request for information (RFI) that included the performance work statement (PWS) for the waste disposal services at Fort Leonard Wood and sought responses to six questions. The agency also identified 106 small businesses that perform the type of services contemplated by the cancelled solicitation, and directly emailed the RFI to these firms. The questions focused on whether the firms had the capability to perform the entire requirement, differences in equipment and personnel for portable latrine work as compared to the permanent latrine requirements, whether the firms would submit offers for both requirements if the agency separated the portable and permanent latrine requirements, and cost and price implications associated with splitting the requirements.

Six firms responded to the agency's RFI--the protester did not submit a response. All of them confirmed that they perform both portable and permanent latrine services using the same personnel and essentially the same equipment (although not required by the consolidated RFP, most of the firms reported the benefit of using a larger capacity truck for consolidated requirements due to larger septic tank capacity). One of the firms further explained that many more firms currently perform both services as compared to 10-15 years ago. All six responders stated a preference for consolidation. Four firms stated that they would offer lower prices for a consolidated requirement due to economies of scale, where higher anticipated costs for performing the work as separate requirements were attributed to associated increases in overhead, manpower, equipment and transportation costs.² One responder reported that, due to these additional costs involved in doing so, it would not submit proposals to compete for the work if the portable and permanent latrine services were solicited separately. Another firm expressed its opinion that separating the requirements would limit competition among small businesses located beyond the Fort Leonard Wood area, since smaller requirements are less attractive business opportunities.

¹ The record reflects that the agency has historically procured these services at this location under a single contract set aside for small business concerns.

² One responder, indicating the similar nature of the portable and permanent latrine work, noted that its pricing would be based on a per gallon price for either of the services.

Based on the results of the above market research, the contracting officer concluded that there are small businesses capable of, and interested in, servicing both portable and permanent latrines, and that the services are substantially similar, utilizing the same personnel, skills, and equipment (although some prefer larger capacity trucks for septic tank work). The contracting officer also determined that “separating the services into two contracts could have the effect of limiting competition by making the contracts financially unappealing for companies, especially small businesses, which are not in close proximity to Fort Leonard Wood.” Agency Report, Tab 15, Market Research Report, May 23, 2012 at 5. The contracting officer further found that cost savings and operational efficiencies associated with combining the portable latrine disposal requirements with the permanent latrine requirements made it the best method of meeting the agency’s overall needs.

The current RFP, requesting proposals for both the portable and permanent latrine services, was issued on June 11, 2012. The agency reports that seven small businesses submitted proposals for award of the RFP’s combined portable and permanent latrine disposal services contract. MCS filed this protest shortly before the scheduled closing date for the receipt of proposals.

DISCUSSION

MCS, a portable latrine contractor, alleges that most portable latrine contractors do not service permanent latrines/septic tanks, that portable and permanent latrine services are separate industries requiring specialized equipment and personnel, and that consolidating the requirements in this RFP is restrictive of competition in violation of CICA.³

CICA generally requires that solicitations permit full and open competition and contain restrictive provisions and conditions only to the extent “necessary to satisfy the needs of the executive agency.” 10 U.S.C. § 2305(a)(1)(A) (2006). Since consolidated or “bundled” procurements may combine separate, multiple

³ MCS acknowledges that, since the agency has historically procured the same consolidated requirement under small business set-aside procurements, the current consolidated requirement is not a “bundled” requirement under the terms of the Small Business Act and Federal Acquisition Regulation (FAR), which define bundling as the consolidation of requirements previously performed under separate smaller contracts where the consolidation is likely to be unsuitable for small business concerns. 15 U.S.C § 632(o)(2) (2006); FAR § 2.101. In this regard, the firm has provided no support for its contention that the agency was required to perform the detailed quantification of benefits analysis associated with bundled procurements under FAR § 7.107.

requirements into one contract, they have the potential for restricting competition by excluding firms that can furnish only a portion of the requirements. Aalco Forwarding, Inc., et al., B-277241.12, B-277241.13, Dec. 29, 1997, 97-2 CPD ¶ 175 at 6. In interpreting CICA, we have assessed whether an agency has a reasonable basis for its contention that the consolidation is required to meet its needs, and have sustained protests only where no reasonable basis is demonstrated. U.S. Electroynamics, Inc., B-403516, B-403516.2, Nov. 12, 2010, 2010 CPD ¶ 275 at 9; 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9; Teximara, Inc., B-293221.2, July 9, 2004, 2004 CPD ¶ 151 at 6. We have noted that mere administrative convenience alone does not provide a reasonable basis for restrictive competition through consolidation of requirements, but substantial cost savings through reduction of duplicative efforts and operational efficiencies may provide a reasonable basis for consolidation. See U.S. Electroynamics, Inc., supra.

The agency identifies its overall procurement needs as protecting the health and safety of the community through the provision of highly reliable, effective disposal of sanitary refuse in a cost effective and administratively efficient manner while encouraging full and open competition among small business concerns for the agency's refuse disposal requirements. Contracting Officer (CO) Statement at 7. Based on the market research results, the agency found that combining the portable and permanent latrine waste disposal services would substantially reduce contract costs by avoiding duplicative services in terms of overhead, manpower, materials and transportation costs. In reaching this conclusion the agency notes that approximately 63 percent of the permanent latrines are co-located with portable latrines and that, based on the RFI responses, the services are substantially the same, utilizing the same personnel, skills, and equipment. Id. at 6, 8. Further, the agency determined that combining these requirements under one contract would reduce the agency's administrative costs by eliminating the costs associated with conducting and overseeing separate acquisitions, as well as the costs and inefficiencies associated with performing potentially twice as many inspections, which would only be required if the requirements are separately procured since the majority of the portable and permanent latrines are co-located. Id. at 8. Additionally, given the RFI responses indicating that firms did not desire to compete for smaller requirements, the agency was concerned that competition for the significantly smaller permanent latrine requirement would be limited if it was separately procured.⁴ Id. Based on the above considerations, the agency maintains that it was reasonably necessary to combine the portable and permanent latrine waste disposal requirements.

The record, to include the RFI responses, confirms the agency's findings and the reasonableness of the agency's decision to combine its portable and permanent

⁴ The record reflects that there are approximately 750 portable latrines, and approximately 50 permanent latrines. CO Statement at 1.

latrine disposal requirements. As noted above, most of the contractors that responded to the RFI expressly indicated that separating the requirements would increase their prices, and the protester has not challenged the factual bases for the agency's asserted operational savings associated with using two separate contractors to service the portable and permanent latrines, the majority of which are co-located. Further, as the agency points out, the RFI responses contradict the protester's general assertion that separating the requirements would increase competition among small businesses. In this regard, based on the RFI responses, the agency was reasonably concerned that separating the requirements could potentially decrease competition since at least one otherwise interested small business stated that it would not be worthwhile for the firm to compete for the smaller, separated requirements, and another firm pointed out that the smaller requirements would be less financially attractive to firms located outside the geographical area. Moreover, notwithstanding the protester's assertions to the contrary, the results of the agency's market research do not reflect a need for different specialized equipment or personnel when performing the portable latrine waste disposal services as compared with the permanent latrine disposal services. As the agency reasonably found, the RFI responses uniformly indicate that the services are substantially similar.

Although the protester ultimately disagrees with the agency's conclusion that procuring the portable and permanent latrine waste disposal services on a combined basis is reasonably necessary to meet its needs, and believes that the agency should not have relied on the market research results because, in the protester's view, the RFI responses do not accurately reflect the industry, it has not shown that the agency's findings of cost savings, operational efficiencies, and the potential for enhanced competition, were unreasonable.⁵ See U.S. Electroynamics, Inc., supra. Accordingly, we have no basis to question the

⁵ We find unpersuasive the protester's reliance on our decision in Vantex Serv. Corp., B-290415, Aug. 8, 2002, 2002 CPD ¶ 131, in which we sustained a protest of the agency's consolidation of portable and permanent latrine services. Unlike here, in Vantex, the agency presented little, if any, explanation of its anticipated cost savings, lacked market research to support its consolidation decision, and had only received minimal competition for the consolidated requirement. Also, unlike here, in Vantex, additional firms had expressed interest in separating the requirements, suggesting increased competition could reasonably be anticipated by separating the work. Conversely, the agency here had multiple expressions of interest from small business firms that perform both portable and permanent latrine services. In fact, one firm reported that in the last 10 to 15 years, (which we note was a similar time period as when we issued the Vantex decision), the sanitary waste industry has grown to include numerous firms that perform both portable and permanent latrine (including septic tank) services.

propriety of the agency's decision to procure, on a combined basis, the portable and permanent latrine disposal services at issue.

The protest is denied.

Lynn H. Gibson
General Counsel