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**Comptroller General
of the United States**

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

Decision

Matter of: Phoenix Environmental Design, Inc.

File: B-412503

Date: March 7, 2016

Colin Chad Gill for the protester.

Craig T. Donovan, Esq., and Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency.

Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency did not provide proper notice of a solicitation for a purchase order is denied where the purchase order was expected to be valued lower than the \$25,000 threshold requiring use of the government-wide portal of entry, FedBizOpps, for such notice, and the agency displayed notice of the solicitation on the agency's publicly accessible procurement website.

DECISION

Phoenix Environmental Design, Inc., of Newman Lake, Washington, protests the issuance of a purchase order to Walking Point Farms, LLC, of Tigard, Oregon, under request for quotations (RFQ) No. L16PS00024, issued by the Department of the Interior (DOI) for the provision of herbicide chemicals for use on public lands in the field offices of the Bureau of Land Management's (BLM) West Desert District office. Phoenix alleges that it was prevented from competing for this award because the agency did not provide adequate notice of the solicitation.

We deny the protest.

BACKGROUND

On July 29, 2015, the agency issued a prior solicitation, RFQ No. 1012918 (FSS RFQ), under the General Services Administration (GSA) e-Buy program to Federal

Supply Schedule (FSS) contract holders under schedules 51V and 71V.¹ Agency Report (AR), Tab 3, GSA eBuy Summary. On August 20, the agency issued a purchase order (FSS purchase order) to Walking Point in the amount of \$22,634. Id.; AR, Tab 4, GSA e-Buy FSS Purchase Order to Walking Point. On August 21, the agency modified the FSS purchase order, adding open-market clauses and notations. Memorandum of Law at 2.

Also on August 21, Phoenix contacted the agency, questioning the issuance of the FSS Purchase Order and raising the possibility of filing a protest. Phoenix and the agency exchanged multiple e-mails concerning the FSS purchase order. Contracting Officer's (CO) Statement at 1. Phoenix requested that the agency keep Phoenix apprised of the status of the award. Protest at 3.

On November 2, Walking Point notified the agency that it could not proceed with the FSS purchase order because more than 20 percent of the order was for open-market items, and DOI cancelled the FSS purchase order. CO Statement at 2. On November 5, the agency issued a new RFQ, No. L16PS00024, as a service-disabled veteran-owned small business set aside, for the same requirements. The notice listed the value of the purchase order as \$33,380, which is the same amount as was listed for the prior RFQ. The agency published notice of the new RFQ only on FedConnect.net, DOI's publicly-accessible procurement website.² AR, Tab 9, Screenshot of 2nd RFQ on FedConnect.net, at 2. Although the FedConnect posting listed Phoenix as a vendor that should receive an invitation to provide a quotation, Phoenix is not registered with FedConnect.net, and therefore did not receive an individual invitation. Id. at 1.

The agency received quotations from three vendors in response to this RFQ, but no quotation from Phoenix, which apparently was unaware of the solicitation. CO's Statement at 3. The agency issued a purchase order to Walking Point on November 23 in the amount of for \$22,042. Id.; AR, Tab 12, Award to Walking Point. Phoenix contacted the agency on November 27, stating that Phoenix had just discovered the notice of issuance of the second purchase order on the FedConnect website, and filed this protest on November 30. Protest at 4-5.

¹ The agency contends that Phoenix is not an FSS contract holder under these schedules. Agency Request for Dismissal at 2. Phoenix has not rebutted this contention.

² The agency states that FedConnect provides emailed notice of available requirements to vendors registered in the system and to vendors chosen from vendor lists. The agency also notes that FedConnect is available to any vendor interested in monitoring federal government electronic commerce systems, whether or not the vendor is registered in FedConnect. AR at 6.

DISCUSSION

Phoenix argues that the agency did not notify Phoenix of the cancellation of the FSS purchase order and the issuance of the second RFQ, despite the fact that Phoenix had expressed an interest in competing for the items covered by the FSS purchase order.³ In response, BLM states that the notice it provided was adequate and in accordance with applicable regulations.

The Federal Acquisition Regulation (FAR) provides that for proposed contract actions expected to exceed a value of \$15,000 but not expected to exceed \$25,000, notice can be given by displaying notice of the solicitation or a copy of the solicitation in a public place, or by any appropriate electronic means. FAR § 5.101(a)(2). For contract actions expected to exceed \$25,000, the agency must use the only recognized Government-wide point of entry--the FedBizOpps website.⁴ FAR §§ 2.101 and 5.101(a)(1).

Here, as stated above, the notice for the second RFQ listed a value of \$33,380, which would require notice to be given through FedBizOpps. The contracting officer (CO) asserts, however, in a statement submitted during the development of the protest record, that this amount was the original estimated amount that was listed in the FSS RFQ before the agency received Walking Point's \$22,634 quotation, and was not accurate. CO Statement at 2, 4-5. The CO explains that the \$33,380 amount was inadvertently included in the second RFQ because it was simply copied from the earlier FSS RFQ for the same requirements. Id.

Although this assertion regarding the value of the acquisition was not made at the time the RFQ was posted, our Office generally will consider post-protest explanations that provide a more detailed rationale for contemporaneous conclusions in our review of the rationality of an agency decision, so long as those explanations are credible and consistent with the contemporaneous record. Windstream Communs., B-409928, Sept. 9 2014, 2014 CPD ¶ 5 n.5; Remington Arms Co., Inc., B-297374, B-297374.2, Jan 12, 2006, 2006 CPD ¶ 32 at 12.

Here, we find credible the agency's post-protest explanation that the expected value for the second purchase order would be less than \$25,000, given the very recent procurement history, i.e., the FSS purchase order quotation of \$22,634 for the same requirements. The CO's explanation for the discrepancy between the agency's

³ Phoenix's protest, as initially filed, raised several other arguments that were dismissed by our Office for various procedural grounds on December 28, 2015. Those grounds of protest are not relevant here. Notice of Partial Dismissal, December 28, 2015.

⁴ The FedBizOpps website is located at <http://www.fbo.gov>.

estimate of the value and the price that was inadvertently copied onto the second RFQ is also credible under these circumstances. Accordingly, since the agency did not expect the second purchase order to exceed \$25,000--an expectation that was also borne out by the value of the award--we agree that the agency was not required to post notice of the RFQ on FedBizOpps. Instead, the notice the agency provided on FedConnect.net, the agency's publicly accessible procurement website, met the FAR requirement for providing notice by "any appropriate electronic means." FAR § 5.101(a)(2). Accordingly, we deny the protest.⁵

The protest is denied.

Susan A. Poling
General Counsel

⁵ Given our finding above that proper notice was given, we dismiss Phoenix's claim that the agency deliberately failed to solicit Phoenix's bid. Similarly, we do not discuss allegations of bad faith and other complaints that Phoenix included in its comments on the agency report. Although we have reviewed these arguments, we find that none demonstrates that the agency violated any statute or regulation, or otherwise provides a basis to sustain Phoenix's protest.