



## Decision

**Matter of:** Bluehorse Corporation

**File:** B-415641; B-415641.2; B-415642; B-415642.2

**Date:** February 6, 2018

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Akenaten Bluehorse for the protester.  
Brian A. Quint, Esq., Department of the Interior, for the agency.  
Peter D. Verchinski, Esq., and Amy B. Pereira, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Agency's failure to solicit a quotation from the protester under an oral solicitation conducted under simplified acquisition procedures is unobjectionable where the contracting officer obtained adequate competition and the record shows that the agency was unaware of protester's interest in submitting a quotation.

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### DECISION

Bluehorse Corporation, an Indian Small Business Economic Enterprise (ISBEE) of Reno, Nevada, protests the Department of the Interior, Bureau of Indian Affairs' (BIA) award of two contracts to NSP-BCH LLC, of Chandler, Arizona. The first contract, No. 140A1118P0004 (P0004), was for approximately 7,500 gallons of clear diesel fuel for the San Carlos Irrigation Project (SCIP) located in Coolidge, Arizona, and the second contract, No. 140A1118P0005 (P0005), was for approximately 5,000 gallons of clear diesel fuel for the SCIP located in Sacaton, Arizona. Bluehorse contends that the agency improperly denied the firm the opportunity to compete for the contracts.

We deny the protests.

### BACKGROUND

In October 2017, BIA determined that it had two requirements for clear diesel fuel. Given the low dollar value for these requirements (both were under \$25,000), the BIA decided to procure the fuel using oral solicitations from ISBEEs under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) part 13. In conducting market research to identify ISBEE sources for these two requirements, the contracting officer consulted the Small Business Administration's (SBA) Dynamic Small Business

Search (DSBS) database on October 18, 2017, and searched for ISBEEs under the North American Industry Classification System (NAICS) code 324110, Petroleum Refineries. P0004, Agency Motion to Dismiss, Market Research Report, at 11-13; P0005, Agency Motion to Dismiss, Market Research Report, at 11-13. Thirty eight sources, including Bluehorse, were listed in the system. Id.

For each procurement, a representative from SCIP contacted four potential vendors, all of which were ISBEEs, and all of which indicated that they were capable of meeting the requirement for each contract. P0004, Memorandum of Law (MOL) at 1; P0005, MOL, at 1; P0004, Market Research Report, at.5; P0005, Market Research Report, at 5. The agency then orally solicited quotes from three of these vendors, and subsequently made award to the vendor submitting the lowest priced-quotation.

On October 31, the agency posted the awards on FedBizOpps. For P0004 and P0005, the contracts were awarded to NSP-BCH, LLC in the amounts of \$19,160, and \$13,047, respectively. P0004, Protest, FBO Notice; P0005, Protest, FBO Notice. These protests followed.

## DISCUSSION

Bluehorse contends that the agency improperly denied the firm the opportunity to compete for these contracts.<sup>1</sup> Bluehorse asserts that the agency acted improperly by failing to solicit a quotation from Bluehorse. Although we do not address all of Bluehorse's challenges, we have considered all of them and find none provides a basis to sustain the protest.<sup>2</sup>

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<sup>1</sup> In its protests, Bluehorse initially raised various allegations relating to the agency's conduct of the procurements. For example, Bluehorse asserted that the agency did not properly publicize the solicitations, as they were not displayed in a public place or on an electronic forum. However, the agency's request to dismiss and subsequent agency report explained that the agency had conducted the procurements using oral solicitations in accordance with FAR § 13.105 and § 5.101. Consequently, the agency was not required to publically (or electronically) display the solicitations.

<sup>2</sup> For example, the protester cites our decisions for the proposition that the "market research" conducted here was inadequate because the agency only utilized a search of the DSBS database. In this regard, the protester cites Triad Isotopes, Inc., B-411360, July 16, 2015, 2015 CPD ¶ 220, for the proposition that the "agency did not conduct proper market research by simply relying on a NAICS code search in the SBA database." Protester's Combined Comments at 7. However, these decisions are inapposite. They relate to whether an agency's market research was adequate to support a finding that a procurement should be set aside for small businesses. Here, the agency only solicited offers from ISBEEs, and the "market research" that Bluehorse is challenging is, in essence, the agency's determination of which ISBEEs to solicit. In any event, the record shows that the agency looked for ISBEEs, found a list of

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Bluehorse contends that it was improperly denied an opportunity to compete because the agency failed to orally solicit a quotation from Bluehorse.<sup>3</sup> With regard to P0004, Bluehorse notes that the firm delivered clear diesel fuel to the Coolidge, Arizona site in February, 2016, and that, in September, 2016, Bluehorse inquired about a solicitation that the agency had posted for fuel to the same Coolidge, Arizona site. Given this history, Bluehorse argues that the agency acted improperly by failing to request a quotation from Bluehorse for this site. With regard to P0005, Bluehorse notes that the Sacaton, Arizona and Coolidge, Arizona locations are geographically close to each other, and thus the agency should have solicited a quotation from Bluehorse for this site for the same reasons the agency should have solicited a quotation from Bluehorse for the Coolidge site.

The agency argues that it acted properly because it contacted at least three vendors in accordance with the FAR, and it was not aware of Bluehorse's interest in competing for these specific requirements. P0004, MOL at 3-5; P0005, MOL, at 3-5.

Where an agency is using simplified acquisition procedures, it is not required to use full and open competition to conduct the procurement. See 41 U.S.C. §§ 3301(a), 3305. Instead, the agency is required to promote competition to the maximum extent practicable. 41 U.S.C. §§ 1901, 3305(d); FAR § 13.104. While this standard generally may be met through the solicitation of at least three sources, see FAR § 13.104(b);

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38 potential firms, and, before soliciting quotations, determined that those they contacted were capable of performing the work.

<sup>3</sup> In addition, Bluehorse also argues that the agency violated various procurement laws and regulations by not soliciting quotations from more than three firms in general. For example, Bluehorse argues that certain provisions in FAR part 19, Small Business Provisions, necessitate that the agency solicit more than three sources here. These arguments are without merit. Generally speaking, under simplified acquisition procedures, soliciting three sources meets the FAR's requirement for promoting competition in a simplified acquisition. FAR § 13.104(b); Latvian Connection Gen. Trading & Constr., LLC, B-409442, Apr. 25, 2014, 2014 CPD ¶ 135 at 2. The FAR part 19 provisions the protester points to relate to encouraging, to the extent practicable, "maximum" participation in a solicitation by making every reasonable effort to find additional small business concerns (FAR § 19.202-2(a)), and to making partial small business set-asides (FAR § 19.502-3(a)). Neither requires that, under the circumstances here, the agency solicit quotations from more than three firms. Furthermore, the protester makes the general allegation that 48 C.F.R. § 1480.503 (Simplified Acquisitions under the Buy Indian Act) requires the agency to solicit more than three sources; however, the protester points to nothing in this regulation that would require such an outcome. Given this, we find no merit to the protester's contentions that these regulations require the agency to solicit more than three sources here.

Omni Elevator Co., B-246393, Mar. 6, 1992, 92-1 CPD ¶ 264 at 2, an agency does not satisfy its requirement to obtain competition to the maximum extent practicable where it fails to solicit other responsible sources who request the opportunity to compete--in those circumstances, those sources should be afforded a reasonable opportunity to do so. Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 3. The determinative issue in such cases is whether the agency made a deliberative or conscious attempt to preclude the protester from competing, knowing the firm's interest in competing, and, if it did so, whether that action was reasonable. Omni Elevator Co., *supra*, at 2; see Solutions Lucid Group, LLC, B-400967, Apr. 2, 2009, 2009 CPD ¶ 64 at 3.

Here, we find nothing improper with the agency's determination not to obtain an oral quotation from Bluehorse for either location under these solicitations. While the record shows that Bluehorse provided diesel fuel to the agency in February, 2016 for the Coolidge, Arizona location, the record also shows that Bluehorse was aware of a September, 2016 solicitation for fuel at the same location, and did not provide a quotation in response to the solicitation. In this regard, the record shows that Bluehorse requested, on September 19, 2016, the delivery schedule for the September, 2016 solicitation. The agency informed Bluehorse that it needed the fuel immediately, and that Bluehorse was to provide its best delivery schedule "if you provide a quote." P0004, Agency Report, Tab 5, Agency Email to Bluehorse, at 1; P0005, Agency Report, Tab 5, Agency Email to Bluehorse, at 1. Bluehorse provided no response, and there is nothing in the record to indicate that Bluehorse was in contact with the agency regarding fuel deliveries to this location after this. Given this, there is no evidence that the agency was aware of Bluehorse's interest in competing for this work. Similarly, as the agency had no reason to believe that Bluehorse had requested the opportunity to compete for the fuel delivery at the Coolidge location (where Bluehorse had provided deliveries in the past), the agency also had no reason to believe that Bluehorse had expressed an interest in competing for the fuel delivery at the Sacaton, Arizona location (where Bluehorse had not provided deliveries). In sum, while it was within the agency's discretion to obtain an oral quotation from Bluehorse for either location, we find that under the facts here the agency was not required to do so.

The protest is denied.

Thomas H. Armstrong  
General Counsel