



## Decision

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

**File:** B-422547

**Date:** July 29, 2024

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C. Chad Gill, for the protester.

William Blake, Esq., Department of the Interior, for the agency.

Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the agency's decision to not solicit the protester is denied where the solicitation was issued to at least three schedule contractors in accordance with the procedures of Federal Acquisition Regulation (FAR) subpart 8.4.
2. Protest alleging that the agency improperly awarded order to a vendor under a special item number (SIN) that was different from the SIN the solicitation was issued under is denied where the solicitation was not limited to the SIN under which the solicitation was issued, and the awardee's equipment was available under the awardee's applicable Federal Supply Schedule contract.

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### DECISION

Phoenix Environmental Design, Inc. (Phoenix Environmental), a service-disabled veteran-owned small business (SDVOSB) of West Richland, Washington, protests the award of a delivery order to Morning Star Industries, Inc. (Morning Star), a small business of Jensen Beach, Florida, under request for quotations (RFQ) No. 140FHR24F0017 issued by the Department of the Interior, U.S. Fish and Wildlife Service for herbicides to be used at Anahuac National Wildlife Refuge. The protester contends that the agency improperly failed to solicit the protester for the procurement because the agency was aware of the protester's interest in competing for these requirements. The protester also argues that the award was improper because the agency issued the order under a special item number (SIN) that was different from the

SIN under which the agency solicited quotations.<sup>1</sup>

We deny the protest.

## BACKGROUND

On March 12, 2024, the agency issued the RFQ on the General Services Administration's (GSA) electronic RFQ system, eBuy, as a small business set-aside.<sup>2</sup> Agency Report (AR), Tab 4, RFQ. The RFQ was issued under SIN 332510C using the Federal Supply System (FSS) procedures of Federal Acquisition Regulation (FAR) provision 8.405-1.<sup>3</sup> *Id*; Contracting Officer Statement (COS) at 2. The RFQ contemplated the issuance of a fixed-price, brand name or equal, delivery order for herbicides to control aquatic and terrestrial invasive species across various wildlife refuges at Texas Chenier Plain National Wildlife Refuge Complex. AR, Tab 3, Simplified Acquisition Strategy at 1; Tab 5, Specifications at 1.

The agency received four responsive quotations by the RFQ's March 26 response date.<sup>4</sup> AR Tab 7, Simplified Acquisition Summary Final at 2; Tab 4, RFQ. Phoenix Environmental did not have access to the RFQ on eBuy because the protester does not have SIN 332510C on its FSS contract, and it was not otherwise solicited for these requirements. On March 29, 2024, based on the agency's findings that Morning Star offered the lowest-priced, technically acceptable (LPTA) quotation, the agency issued

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<sup>1</sup> A SIN is a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function. Federal Acquisition Regulations (FAR) subpart 8.401. Buyers may use the General Services Administration (GSA) eBuy system to notify all sellers listed under a particular SIN category or a lesser number of sellers, but sellers that were not notified via eBuy may nevertheless submit a quotation for an RFQ placed under their awarded SINs. *Pitney Bowes, Inc.*, B-416787, Dec. 6, 2018, 2018 CPD ¶ 414 at 2 n.2.

<sup>2</sup> The GSA eBuy system is an online RFQ tool designed to facilitate the submission of quotations for a wide variety of commercial goods and services under GSA schedules and technology contracts. *Bluewater Mgmt. Grp., LLC*, B-414785, Sept. 18, 2017, 2017 CPD ¶ 290 at 2 n.1.

<sup>3</sup> GSA's description for SIN 332510C is hardware store, home improvement center, industrial or general supply store, or industrial maintenance repair and operations distributor, and includes lawn and garden products and equipment. See GSA eLibrary Contractor Listing for SIN 335210C, available at <https://www.gsaelibrary.gsa.gov/ElibMain/home.dohttp://www.gsaelibrary.%20gsa.gov/ElibMain/sinDetails.do?scheduleNumber=MAS&specialItemNumber=332510C&executeQuery=YES> (last visited July 19, 2024).

<sup>4</sup> The agency received 8 total quotations, but four were excluded because the vendors quoted items that were not on their FSS contracts. AR Tab 7, Simplified Acquisition Summary Final at 2.

the order to Morning Star at a total price of \$53,938.10. AR, Tab 7, Simplified Acquisition Summary Final at 3.

Relevant to the issues presented in the protest, this RFQ reflects the agency's third attempt to acquire the herbicides at issue. The agency first issued a brand name only solicitation. Phoenix Environmental protested with our Office the brand name only limitation as unduly restrictive of competition; that protest was dismissed as academic based on the agency's proposed corrective action to cancel that solicitation and reassess its requirements. See *Phoenix Env'tl. Design, Inc.*, B-422314, Jan. 30, 2024 (unpublished decision). The agency then issued a second solicitation; following correspondence with Phoenix Environmental raising concerns with that solicitation, the agency cancelled the solicitation. See Protest at 2-4 (incorporating emails between the protester and agency). Thereafter, the agency issued the current RFQ on the GSA eBuy system to vendors with SIN 332510C on their FSS contracts. However, as noted above, Phoenix Environmental did not have access to the solicitation because it does not have that SIN on its FSS contract. The protester represents that it first learned of the solicitation and award to Morning Star on April 24. *Id.* at 4. On April 26, 2024, the protester filed its protest with our Office.

## DISCUSSION

Phoenix Environmental raises two primary protest grounds.<sup>5</sup> First, the protester argues that the agency should have sought a quotation from the protester because the agency was undeniably aware of the protester's interest in the procurement and it was required to promote competition to the maximum extent practicable. Protest at 1; Comments at 5. Second, the protester further argues that it was improper of the agency to issue an order to the awardee under a SIN different from the SIN under which the RFQ was issued. Comments at 1-7. For the reasons addressed herein, we find no basis on which to sustain the protest.

### Reasonable Opportunity to Compete

Phoenix Environmental first argues that the agency should have solicited the protester because the agency was aware of the protester's interest in the procurement. Protest

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<sup>5</sup> Phoenix Environmental also argues that the agency failed to comply with the corrective action the agency proposed to take in response to the protester's protest (B-422314) to the agency's first solicitation. Protest at 2. The agency previously represented that it would cancel the initial brand name only solicitation, reassess its requirements to determine whether a brand name only restriction was necessary to fulfill its needs, and resolicit its requirements. See *Phoenix Env'tl. Design, Inc.*, *supra*. Here, the agency did exactly what it proposed to do; it cancelled the brand name only solicitation, determined that brand name or equivalent products could satisfy the government's requirements, and resolicited its requirements. While we address the protester's arguments that it should have been solicited, we find no basis to conclude that the agency failed to implement its previously proposed corrective action.

at 1. Specifically, the protester argues that, to the extent the agency was required to promote competition to the maximum extent practicable, the agency is required to solicit from vendors that “request the opportunity to compete.” *Id.*; Comments at 5.

The agency acknowledges that it was aware of the protester and its general interest in providing the supplies at issue but maintains that as a FSS purchase between the micro-purchase and simplified acquisition thresholds the agency was only required to request quotations from a minimum of three schedule contractors.<sup>6</sup> Memorandum of Law at 3-5. Having met this requirement when it solicited eligible vendors under SIN 332510C, the agency argues that it was not under any further duty to provide the RFQ to the protester. *Id.* We agree with the agency.

The FSS program directed and managed by GSA gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Before placing an order exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, the FAR provides that 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 three schedule contractors; or (3) request quotations from at least three schedule contractors. FAR 8.405-1(c).

Here, the contracting officer estimated the value of the acquisition to be \$60,764, which is above the micro-purchase threshold but below the simplified acquisition threshold. COS at 2, 4. In accordance with FAR section 8.405-1(c)(1), the agency issued the RFQ to multiple small business vendors under SIN 332510C and received four responsive quotations. AR, Tab 6, eBuy Abstract of Quotes at 1-2. Having requested quotations from at least three schedule contractors, the agency met the requirement of FAR section 8.405-1(c)(1).

Contrary to the protester’s allegations, the agency was not required to promote further competition beyond what is required by FAR section 8.405-1(d)(3)(ii). In this regard, following the rules established for using FSS contracts satisfies the Competition in Contracting Act’s requirements for full and open competition. 41 U.S.C. § 152(3); FAR 6.102(d)(3); *Bridges Sys. Integration, LLC*, B-411020, Apr. 23, 2015, 2015 CPD ¶ 144 at 8. Accordingly, where as here the agency solicited and received quotations from at least three schedule contractors, we find no basis to conclude that the agency violated the procedures of FAR subpart 8.4 nor that it was required to solicit the protester. See, e.g., *Lockmasters Security Inst., Inc.*, *supra* at 6 (denying protest that the agency failed to solicit from the incumbent contractor because “[u]nder the FSS, however, a vendor has no legal expectation or entitlement to be one of those vendors solicited”); *Allmond & Co.*, B-298946, Jan. 9, 2007, 2007 CPD ¶ 8 at 2-3 (same). Because the protester has

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<sup>6</sup> The current micro-purchase threshold is \$10,000, while the current simplified acquisition threshold is \$250,000. FAR 2.101.

failed to establish that the agency was required to solicit the protester, we deny this protest ground.

#### Award Made Under a Different SIN

Phoenix Environmental next argues that the agency improperly issued an order to Morning Star where at least one of the herbicides it quoted is listed on Morning Star's FSS contract under a SIN that differs from the SIN used to issue the RFQ on the eBay system.<sup>7</sup> Comments at 1-7. The protester further contends that the agency unreasonably found Morning Star's quotation technically acceptable considering no vendor offers the agency's specified herbicides, or their equivalents, under SIN 332510C. *Id.* The agency responds that the difference between the SINs is of no consequence. While the RFQ was issued under SIN 332510C, the agency argues that it was not required to only accept herbicides under that SIN and could accept herbicides offered under any SIN so long as the products were on the vendor's FSS contract. For the reasons discussed below, we agree with the agency.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's issuance of the order was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *See Carahsoft Tech. Corp.*, B-401169; B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 3. Based on our review of the record, we find the agency's posting of the RFQ on eBay, and subsequent issuance of the order to Morning Star, unobjectionable for the reasons set forth below.

Phoenix Environmental argues that it was improper for the agency to make award to Morning Star when the solicitation was sent to FSS contractors with SIN 322510C on their FSS contracts, but a required product was listed under a different SIN on Morning Star's FSS contract. However, while the solicitation was sent to vendors with SIN 322510C on their FSS contracts, nothing in the solicitation expressly limited vendors to providing items only under that particular SIN. As we have previously explained, FAR subpart 8.4 does not require an agency to identify an applicable SIN when ordering from a FSS contract, or otherwise restrict a vendor's ability to propose items only from a single SIN. *Pitney Bowes, Inc.*, *supra* at 4. Rather, when a RFQ does not specifically limit goods or services to those under a particular SIN, the relevant question is whether the offered goods or services are on the schedule contractor's applicable FSS contract. *Id.*

Phoenix Environmental argues that the solicitation did specifically limit submissions under the RFQ to items available under SIN 322510C. To support its argument,

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<sup>7</sup> As the protester notes, it appears that at least one of the required herbicides appears to be on Morning Star's FSS contract under SIN 325998, titled chemical additives. See Comments at 2; see also GSA Advantage page for Roundup Custom – Aquatic Terrestrial Herbicide, available at [https://www.gsaadvantage.gov/advantage/ws/catalog/product\\_detail?gsin=11000061370154](https://www.gsaadvantage.gov/advantage/ws/catalog/product_detail?gsin=11000061370154) (last visited July 19, 2024).

Phoenix Environmental relies on an eBuy webpage screenshot provided by the agency. The screenshot shows an action taken by the contracting officer in eBuy as part of the automated process of issuing the RFQ to vendors in the eBuy system. As part of this process, the contracting officer was presented with, and declined, an option in eBuy to “allow contractors to offer supplies and/or services under one or more Complementary SINS.” Electronic Protest Docketing System (Dkt.) No. 16, Screenshot of Full eBuy RFQ at 2. The protester argues that by declining this option, the contracting officer affirmatively disallowed vendors from submitting herbicides provided under SINS complementary to SIN 332510C. Dkt. No. 17, Response to Full eBuy RFQ. We do not agree that the contracting officer’s actions in the eBuy system put vendors on notice that they were precluded from submitting products under different SINS.

Here, the protester relies on language presented to the contracting officer as she created the RFQ, rather than to the text of the RFQ as issued. There is no evidence to suggest that the contracting officer’s decision created a corresponding statement within the subsequent RFQ that explicitly prohibited vendors from supplying herbicides from complementary SINS. Indeed, information on the GSA eBuy website supports the contention that the “Complementary SINS” section primarily functions to determine the scope of the audience of contractors notified of the RFQ posting rather than to limit the extent to which vendors may submit offers with products from complementary SINS. See GSA Buyer Guidance, [https://www.gsaadvantage.gov/images/products/elib/pdf\\_files/bgguide.pdf](https://www.gsaadvantage.gov/images/products/elib/pdf_files/bgguide.pdf) (last visited July 18, 2024) (“At step 2 of the RFQ process, eBuy may provide one or more ‘suggested categories’ based upon your RFQ information. The purpose is to assist you in selecting the most relevant category to ensure RFQs get to the right contractors. You may select a suggested category or simply continue without a selection.”).

Alternatively, even assuming for the sake of argument that this text was incorporated into the solicitation, the eBuy system makes clear that allowing other SINS would have only notified vendors that supplies and services they offered under complementary SINS would have been acceptable. Dkt. No. 16, Screenshot of Full eBuy RFQ, at 2. The decision not to notify potential vendors that the products they offer under complementary SINS would be acceptable under the RFQ is not equivalent to an explicit prohibition from submitting products from other SINS.

As noted above, in *Pitney Bowes*, a solicitation on its face must be specific in its limitation of offers to those under a particular SIN. While the Complementary SIN selection prompt serves to expand (or limit) the number of vendors that are notified of the RFQ, there is no evidence to suggest that the section also serves to limit vendors in what products within their FSS contracts they may submit.<sup>8</sup> Therefore, the protester’s

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<sup>8</sup> See GSA Buyer Job Aid, [https://www.ebuy.gsa.gov/ebuy/assets/content/eBuy-Buyer\\_jobaid.pdf](https://www.ebuy.gsa.gov/ebuy/assets/content/eBuy-Buyer_jobaid.pdf) (last visited July 18, 2024) (“eBuy provides the ability to include additional categories on an RFQ. Adding additional categories can be useful when . . . you want to post your RFQ to a wider audience of contractors who can view and quote on the RFQ.”).

argument falls short of establishing that the RFQ explicitly prohibited vendors from supplying products offered under complementary SINs. Accordingly, the next question is whether the awardee's offered herbicides were under its applicable schedule contract. On this point, both of the herbicides the awardee offered are under its applicable FSS contract. AR, Tab 8, Task Order Award at 6. Therefore, the awardee's quotation was in accordance with the RFQ.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel