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Decision

Matter of: American Security Programs, Inc.

File: B-402069; B-402069.2

Date: January 15, 2010

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Maria Bellizzi, Esq., General Services Administration, for the agency.
Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that vendor is ineligible to receive a task order under Federal Supply Schedule (FSS) procurement is sustained where certain required services are outside the scope of the vendor's FSS contract.

DECISION

American Security Programs, Inc. (ASP), of Dulles, Virginia, protests the issuance of a task order to Coastal International Security, Inc. (CIS), of Lorton, Virginia, by the General Services Administration (GSA) under request for quotations (RFQ) No. NP9700090888 for construction site security services. ASP alleges that CIS is ineligible to receive an order because it does not offer all the services required by the RFQ on its Federal Supply Schedule (FSS) contract.

We sustain the protest.

The RFQ was issued under Federal Supply Schedule 84, Security Support Services, Special Item Numbers (SIN) 246-52, Professional Security/Facility Management Services; 246-54, Protective Service Occupations; and/or 246-60 2, Security Management and Support Services. The agency required construction site security sufficient to ensure that the finished facility would obtain sensitive compartmented information facility (SCIF) accreditation from the Defense Intelligence Agency (DIA). The services required under the RFQ included the development and

formation of a Construction Security Plan, preparation and submission of daily, monthly, and quarterly reports detailing performance under the task order, construction site security program management services, construction surveillance technical services, access control services, security monitoring services, transition services, and quality assurance. RFQ §§ 2.4-2.6.1. The estimated value of the order was approximately \$14 million. The RFQ stated that “[a]ny quote that contains products/services that are not currently on the contractor’s schedule contract . . . will be ineligible for award.” Id. at § 18.1. The RFQ informed vendors that the agency would select the vendor whose quotation was the most advantageous to the government, price and other factors considered; technical approach was more important than price. Id. at § 18.0.

Three vendors, including CIS and the protester, timely responded to the RFQ. ASP submitted its quotation under SINs 246-52 and 246-54, and CIS submitted its quotation under SIN 246-54. The agency performed an initial consensus evaluation, conducted discussions, and reevaluated quotations. Based on the results of that evaluation process, the agency issued the task order to CIS, and this protest followed.

The protester asserts that the awardee is ineligible for award because it does not offer all the services required by the RFQ on its FSS contract.¹ The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation § 8.401(a). The procedures established for the FSS program satisfy the statutory requirements for full and open competition. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 3-4. Where an agency announces its intention to order from an existing GSA FSS contractor, it means that the agency intends to order all items using GSA FSS procedures and that all items are required to be within the scope of the vendor’s FSS contract. See Armed Forces Merch. Outlet, Inc., B-294281, Oct. 12, 2004, 2004 CPD ¶ 218 at 4. Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-5.

ASP asserts that the Construction Site Security Program Management services required under the RFQ are outside the scope of CIS’s FSS contract. Those services

¹ The intervenor argues that this protest allegation is an untimely challenge to the terms of the solicitation, which should have been filed prior to the deadline for submission of quotations. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2009). We disagree. The protester alleges that the intervenor is not eligible to fulfill the requirements of the solicitation; the allegation goes to the evaluation of the awardee. It is not a protest of the terms of the solicitation.

include the development and implementation of a Construction Security Plan, which requires close coordination between the construction contractor, the Washington Headquarters Services/Base Realignment and Closing (BRAC) Program Office (WHS/BPO), the Army Corps of Engineers, the City of Alexandria Police Department, and the Pentagon Force Protection Agency. The final plan requires approval by the WHS/BPO Program Security Manager. RFQ § 2.6.1, CSSPM Services. To satisfy the requirements of the RFQ under section 2.6.1, the vendor also has to identify, discuss in detail, and coordinate all site-specific security aspects of the project to include the physical, technical, personnel, and procedural security requirements. Through site inspections, daily written reports and written construction site security contractor updates, the contractor must verify to GSA and to the WHS/BPA Program Security Manager that all security requirements have been met in accordance with the government-approved Construction Security Plan, and all applicable instructions, policies, and regulations have been satisfied. Id.

ASP argues that these tasks required services of a professional and consulting nature, unlike the other three major RFQ tasks that could be performed with services from the protective services arena, and that the personnel required to perform those services are not available under the SIN CSI offered--SIN 246-54. See RFQ § 2.6, Tasks. The intervenor and the agency argue that the scope of SIN 246-54 is in fact broad enough to encompass the required services. They point to the category description for SIN 246-54, which states:

Protective Service Occupations -- Including Security Guards, Alarm Monitors, Baggage Inspectors, Corrections Officers, Court Security Officers, Detection Dog Handlers, Detention Officers, Firefighters, Police Officers, Categories to support Operation On-site of Security Functions, and other support and related categories.

Agency Report (AR), Tab 3 at 3.

When a concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is not whether the vendor is willing to provide the services that the agency is seeking, but whether the services or positions offered are actually included on the vendor's FSS contract, as reasonably interpreted. See American Sys. Consulting, Inc., B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 at 5.

As the category description above shows, SIN 246-54 includes the types of personnel necessary to staff security operations at a facility, or to support those personnel. While the support function category logically includes those personnel who assist the protective service occupations in carrying out their functions, it does not reasonably include individuals who would create the construction site security plan for the purposes of obtaining SCIF accreditation from DIA. Moreover, we have previously recognized the difference in the kinds of personnel available under SINs 246-54 and 246-52. See Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140, at 4-9.

The intervenor argues that SIN 246-54 does include a position--contract manager--that contemplates the type of services called for in the RFQ relating to development of the Construction Security Plan and related services. In this regard, CIS asserts that the Construction Security Plan "is a relatively simple and straightforward document, typically resulting in a checklist developed based on the particulars of each construction project," and does not require "an array of specialized experience apart from providing day-to-day construction site security." CIS Comments, Dec. 30, 2009, Attach. 1, Decl. of John S. Morris at 2.

In our view, the contract manager position description in SIN 246-54 does not include the functions contemplated under the RFQ here as they relate to development of the Construction Security Plan and the associated services to be provided by the contractor. SIN 246-54 describes the contract manager in relevant part as having "overall responsibility for implementing, monitoring, and upgrading the Contractor's quality control plan and . . . for ensuring that the Contractor's work force complies at all times with the contract requirements." AR, Tab 4, SIN 246-54, § 7.1C. With respect to the experience required for the position, the SIN states as follows: "project development and implementation from inspection to deployment; expertise in the management and control of funds and resources using complex reporting mechanisms; and demonstrated capability in managing multi-task Contracts or subcontracts of various types and complexity" *Id.* at § 7.1A. The experience and functions listed in the position description, while clearly managerial, are general in nature and, in our view, do not include the site-specific, detailed, ongoing management services called for under the RFQ here--including the development of a Construction Security Plan. We are unpersuaded by the intervenor's argument that development of the Construction Security Plan (and related services to be performed by the contractor here) should be regarded as a routine and inherent part of management of any construction site security work of the type called for under the RFQ, and thus that performance of these services does not require personnel other than the supervisory personnel included in SIN 246-54.² As noted above, the RFQ calls for a site-specific Construction Security Plan that depends on close coordination with numerous other entities, as well as ongoing services related to ensuring compliance with the Plan in order to obtain SCIF accreditation. RFQ § 2.6.1. These services are not within scope of the supervisory positions described in SIN 246-54.

In sum, CIS' quotation should not have been viewed as having met the RFQ requirement that the vendor possess an FSS contract offering all the services sought.

² In addition to the contract manager position, SIN 246-54 includes a position entitled "supervisor," which is defined as the individual providing day-to-day supervision of the security guards under this contract at the work site.

Consequently, it was not proper for the agency to place the order under CIS' FSS contract.³

In view of our conclusion that an order may not properly be issued to CIS under the RFQ here, we recommend that the agency issue the task order to the vendor next in line for selection under the terms of the RFQ. We also recommend that ASP be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
Acting General Counsel

³ The protester raised a number of other allegations, including that the agency failed to conduct a proper price/technical tradeoff, the agency's evaluation of the intervenor's quotation was unreasonable, discussions were not properly conducted, the agency failed to reevaluate the intervenor's quotation after discussions, and the agency converted the basis for the selection decision from a best value determination to lowest-priced, technically acceptable. Because we conclude that CIS is ineligible to receive the order, we need not consider these other allegations.