



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: CYIOS, Inc.

File: B-402728.3

Date: July 13, 2012

Timothy W. Carnahan, for the protester.
MAJ Christine Fontenelle, Department of the Army, for the agency.
Noah B. Bleicher, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that procurement consolidating information technology support services was an impermissible bundling of requirements is denied, where the agency reasonably determined that consolidation would result in substantial cost savings and efficiencies and was necessary to meet the agency's needs.
2. Protest that procurement should be set aside for small business concerns is denied, where agency reasonably found, based upon market research and the publication of a sources sought notice, that the agency was not likely to receive proposals from at least two small businesses with sufficient experience to perform the overall requirement.

DECISION

CYIOS, Inc., of Washington, D.C., protests the Department of Defense (DOD), Defense Information Systems Agency's (DISA), issuance of solicitation No. EG0206-00, under the General Services Administration's (GSA) Alliant government-wide acquisition program, for information technology (IT) support services. CYIOS alleges that the solicitation constitutes improper bundling of requirements, and that the agency violated applicable small business set-aside requirements.

We deny the protest.

BACKGROUND

Since 2009, the Army's Information Technology Agency has relied on three contracts with large businesses to obtain a full range of IT support services for the Army, including desktop installation services, end user support, video-teleconferencing, requirements analysis and IT service management.¹ Agency Report (AR), Tab 6, DISA Determination & Finding (D&F), at 1. According to DISA--the DOD agency that conducted the subject acquisition on behalf of the Army--the Army has experienced "chronic problems" trying to integrate the three vendors into a "larger, technically and operationally co-dependent environment." Id. at 2. Moreover, DISA reports that the three-vendor scenario "hamper[s] efficient task coordination," and has resulted in "significant delays," "mission degradation" and has had an "impact on customer base." Id. For these reasons, in early 2011, the Army began to consider whether it should consolidate the work performed under the 3 contracts, thereafter concluding that a "single integrated vendor" should provide standardized end user computing device support services. Id. at 3.

In June 2011, DISA prepared a determination and finding (D&F) that addressed the proposed consolidation of the end user computing device support services. See AR, Tab 6, DISA D&F, at 1. The D&F detailed the benefits and savings associated with consolidating the requirements. In this regard, DISA noted that the consolidation of the three contracts into a single scope of work would "provide better accountability" and "facilitate more efficient task coordination." Id. at 3. DISA also determined that a consolidated contract would result in "substantial savings," which the agency projected to be more than \$5 million over the life of the contract. Id. at 7-8.

In connection with its decision to award a single contract, the Army performed market research to assess whether two or more qualified and capable small businesses could "successfully act as prime vendors" in providing the required IT support services. AR, Tab 5(a), Sources Sought Responses, at 1. Specifically, the Army issued a publicly-available "14 day Sources Sought Request for Information" (RFI), asking small business vendors to demonstrate their ability to meet a number of requirements encompassed in the support services being consolidated.² Id. The Army received responses from 16 firms; CYIOS did not respond. Id. at 2.

¹ CYIOS has performed as a subcontractor to one of these large businesses under these contracts. AR, Tab 1, Army Contracting Officer's Statement of Fact, at ¶ 6.

² The RFI sought capability assessments under North American Industry Classification System (NAICS) codes 541513 and 541519. AR, Tab 5(a), Sources Sought Responses, at 1.

The Army analyzed the RFI responses to assess whether the firms had experience in various functional areas and were financially capable of performing the end user computing device support services as prime contractors. See id. at 5-11. The agency found that while some small businesses demonstrated experience in DOD's IT environment, most of the experience was outside the functional areas relevant to the end user computing device support requirements. Id. at 12. The Army noted that "insufficient small business vendors capable of successfully serving as a prime vendor exist[] to assure adequate levels of support, minimize risk to [the Army], and/or achieve mandatory minimum levels of competition during a solicitation." AR, Tab 5(b), Market Research Report, at 3. Moreover, the Army determined that limiting competition to only small business vendors would "pose a significant and unacceptable risk," and that the requirement was "not suitable for small business only competition." Id.

Finally, prior to issuing a solicitation, DISA coordinated with its Office of Small Business (OSB). AR, Tab 1, Army Contracting Officer's Statement of Fact, at ¶ 8. The OSB and a representative from the Small Business Administration (SBA) concurred with DISA's acquisition approach of consolidating the requirements of the three separate contracts into one scope of work offered to GSA Alliant contract holders.³ See AR, Tab 7, Small Business Coordination Record, at 1.

On July 6, 2011, DISA issued the request for proposals (RFP) to GSA Alliant contract holders for the Army's consolidated "Enterprise End User Computing Device Support" contract.⁴ AR, Tab 2, DISA Contracting Officer's Statement of Fact, at 3. The RFP contemplated the award of a fixed-price contract with a 1-year base period, a 1-year option period and a maximum value of \$43,673,088.⁵ RFP at 1; AR, Tab 6, DISA D&F, at 3.

DISA received revised proposals from eight firms on August 30, 2011, including an offer from Serco, Inc., a company with which the protester had a teaming agreement. AR, Tab 2, DISA Contracting Officer's Statement of Fact, at 3; Agency

³ The Army recommended that the GSA Alliant program be utilized for the acquisition because that program would maximize the number of vendors that could compete, and would include some firms that would be excluded from competing if another GSA program were used. AR, Tab 5(b), Market Research Report, at 3.

⁴ The agency utilized GSA's "Opt-in/Opt-out" procedure to determine that 31 out of the 59 GSA Alliant vendors wanted to receive the solicitation. AR, Tab 2, DISA Contracting Officer's Statement of Fact, at 2.

⁵ Under the RFP, firms would be evaluated on a best value basis considering three evaluation criteria: technical/management approach, past performance and price. RFP at 2-3.

Motion to Dismiss, Tab 8, Serco Statement, at 1. On March 23, 2012, award was made to L-3 Services. When CYIOS, a small business, learned of the acquisition, it protested to our Office.⁶

DISCUSSION

CYIOS contends that the consolidation of requirements amounts to improper contract bundling. Protest at 5. CYIOS also alleges that the agency violated statutory and regulatory small business requirements by not setting aside the acquisition for small businesses. Id. at 3.

Bundling

First, CYIOS contends that the agency's consolidation of the requirements constitutes "unnecessary and unjustified" contract bundling. CYIOS asserts that it is the "incumbent small business concern" performing some of the services that are being consolidated, and that the Army "has provided no justification for its decision" to consolidate the requirements. In this regard, CYIOS asserts that the consolidation violates the provisions of the Small Business Act and the Competition in Contracting Act of 1984 (CICA), along with their applicable implementing regulations. Protest at 2-5.

The Small Business Act, as amended, states that, "to the maximum extent practicable," each agency shall "avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors." 15 U.S.C. § 631(j)(3) (2012).⁷ Bundling, for purposes of the Small Business Act, means "consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern." 15 U.S.C. § 632(o)(2). The term "separate smaller contract" is defined as "a contract that has been performed

⁶ CYIOS had initially protested a proposed acquisition for the same services in April 2010. Our Office dismissed that protest as premature because the Army had not yet issued a solicitation.

⁷ The CICA contains a similar limitation on unnecessary consolidation of agency requirements. 41 U.S.C. § 253a(a)(2)(B) (2012). We have held that an agency's compliance with the above-referenced Small Business Act requirements constitutes compliance with the similar CICA requirements. Nautical Eng'g Inc., B-309955, Nov. 7, 2007, 2007 CPD ¶ 204 at 13-14.

by 1 or more small business concerns.”⁸ 15 U.S.C. § 632(o)(3); FAR § 2.101.

Because bundled or consolidated procurements combine separate and multiple requirements into one contract, they have the potential for restricting competition by excluding firms that furnish only a portion of the requirement; we therefore review challenges to such solicitations to determine whether the approach is reasonably required to satisfy the agency’s needs. 2B Brokers et al., B-298651, Nov. 27, 2006, 2006 CPD ¶ 178 at 9. We have recognized that bundling may serve to meet an agency’s needs where the agency reasonably determines that consolidation will result in significant cost savings or operational efficiencies. Id.; Teximara, Inc., B-293221.2, July 9, 2004, 2004 CPD ¶ 151 at 6.

Under the Small Business Act, an agency may determine that consolidation of requirements is “necessary and justified” if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the government would derive “benefits, including any combination of benefits that . . . are measurably substantial.” 15 U.S.C. § 644(e)(2)(B); 2B Brokers et al., supra, at 6. The FAR states in pertinent part that:

[m]easurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as

⁸ The agency argues that the consolidation of the services at issue here does not constitute bundling as contemplated by the Small Business Act, because the work is not currently being performed by any small business concern. AR at 10. The Army acknowledges that, from 2004 through 2009, CYIOS held one of several indefinite-delivery, indefinite-quantity (IDIQ) contracts for IT services, but maintains that CYIOS was never awarded any task orders as a prime vendor under that IDIQ. Rather, the agency maintains that CYIOS’s performance has been only that of a subcontractor under one of the large business’ IDIQ contracts. AR at 10. CYIOS disputes the agency’s position, arguing that it was awarded at least one “business units requirements” task order as a prime contractor to provide IT customer liaison services. These services, CYIOS argues, are part of the requirements being consolidated here. Protest at 3; Comments at 4. We need not resolve this dispute because the record shows, as explained below, that the agency reasonably determined that consolidation of the requirements will result in measurable benefits to the government. See e.g., Nautical Eng’g Inc., supra, at 8.

compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to

(1) Ten percent of the estimated contract or order value (including options) if the value is \$94 million or less. . . .

FAR § 7.107(b)(2).

As discussed above, the agency performed an analysis regarding the benefits to be obtained by consolidation. Among other things, the agency determined that transitioning to a single contractor will result in improved IT support, operational efficiencies, increased task coordination, better accountability, more effective contractor incentives and cost savings. AR, Tab 6, DISA D&F, at 3, 5-7. With regard to cost savings, the agency specifically calculated savings of \$5,421,753, which reflect “approximate[ly] 18%-19% cost savings when compared to overall contract value and historical cost trends. . . .” Id. at 6. DISA explains that these projected savings are the result of the “elimination of redundant program/project management and administrative support,” as well as a reduction of certain technical staff. Id.

In its comments responding to the agency report, CYIOS has not meaningfully challenged any aspect of the agency’s analysis. Specifically, CYIOS’s comments do not address the agency’s calculation of cost savings, nor otherwise discuss the substantial benefits the agency maintains it will obtain. Rather, CYIOS merely asserts that the agency “has provided no justification for its decision.”

On this record, we reject the protester’s arguments challenging the agency’s consolidation of contract requirements. See 2B Brokers et al., supra, at 10-11, 13 n.20 (protester has burden of showing agency’s analysis and explanation supporting bundling are unreasonable); Teximara, supra, at 7, 9 (protester failed to dispute that significant savings and efficiencies will occur by consolidating tasks). CYIOS’s protest alleging that the agency has engaged in improper bundling is denied.

Small Business Set-Aside

Next, CYIOS asserts that the agency improperly failed to conduct this procurement as a small business set-aside pursuant to FAR subpart 19.5. Protest at 2. Specifically, CYIOS asserts that the agency “violated the requirement in [FAR] § 19.502-2(b)” which provides that acquisitions shall be set aside for small businesses where there is a reasonable expectation of receiving fair market price offers from at least two responsible small business concerns. Comments on Agency Report, at 3.

Agencies are generally required to set aside for small businesses procurements that exceed \$150,000 if there is a reasonable expectation of receiving fair market price offers from at least two responsible small business concerns. FAR § 19.502-2(b); e.g., Metasoft, LLC, B-402800, July 23, 2010, 2010 CPD ¶ 170 at 2. An agency must undertake reasonable efforts to ascertain whether it is likely that it will receive offers from at least two responsible small businesses capable of performing the work in question. EMMES Corp., B-402245, B-402245.2, Feb. 17, 2010, 2010 CPD ¶ 53 at 5; Rochester Optical Mfg. Co., B-292247, B-292247.2, Aug. 6, 2003, 2003 CPD ¶ 138 at 4. No particular method of assessing the availability of capable small businesses is required; rather, the assessment must be based on sufficient facts so as to establish its reasonableness. E.g., EMMES Corp., supra, at 5.

Here, as discussed above, prior to issuing the RFP, the agency conducted market research to “assess the capability of the small business community.” AR, Tab 5(a), Sources Sought Responses, at 1. Specifically, the Army published a sources sought notice asking vendors to demonstrate experience in a number of IT areas relevant to the consolidated scope of work. The agency received 16 responses--15 of which were from small businesses--and examined the companies capabilities, which ranged from experience in various functional areas to financial capability. Significantly, CYIOS did not respond to the sources sought notice.

Based on the information it obtained, the agency concluded that “[t]he small business vendors seemed to specialize in a particular task area or two but lacked comprehensive technical capacity and successful performance history across the entire scope of work.” Id. at 12. The agency concluded that “insufficient small business vendors [were] capable of successfully serving as a prime vendor.” Id. Additionally, before issuing the solicitation DISA coordinated with its OSB. In this respect, a small business specialist and an SBA representative approved the acquisition approach. See AR, Tab 7, Small Business Coordination Record, at 1.

Although CYIOS now complains that it has performed part of the consolidated requirements in the past, it has not shown to be flawed or unreasonable the agency’s market research and conclusions regarding whether there are two or more small businesses that could perform the overall contract requirements here at a reasonable price. Based on this record, including the absence of any objection from the OSB and SBA representatives, we find DISA’s decision not to set aside the RFP exclusively for small businesses to be reasonable. See MCS Mgmt., Inc., B-285813, B-285882, Oct. 11, 2000, 2000 CPD ¶ 187 at 7 (set-aside not required where there is no indication that small business concerns could perform food service contracts of the scope and complexity required under the solicitation).

In sum, we find nothing objectionable about the agency's decision to consolidate the services at issue and to award a single task order to a GSA Alliant contractor, or about the decision not to set aside this requirement for small businesses.⁹

The protest is denied.

Lynn H. Gibson
General Counsel

⁹ In its comments on the agency's report, CYIOS argues for the first time that the award to L-3 creates an organizational conflict of interest. Comments at 5. CYIOS provides no meaningful explanation or support for this allegation. Id. In any event, the allegation is untimely because it was filed more than 10 days after the protester knew or should have known the basis of protest; accordingly, it will not be considered. See 4 C.F.R. § 21.2(a)(2) (2012); see also Recreation Res. Mgmt. of America, Inc., B-406072, Feb. 1, 2012, 2012 CPD ¶ 60 at 6.