

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

Decision

Matter of: Technical Associates, Inc.

File: B-406524

Date: June 15, 2012

Joseph H. Proctor for the protester.

Wade L. Brown, Esq., Department of the Army, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an agency improperly restricted a procurement to Federal Supply Schedule (FSS) vendors is denied where agency reasonably determined that the solicited items could be procured through the FSS.

2. Protester is not an interested party to challenge the terms of a solicitation issued under the FSS program where the protester does not hold an FSS contract.

DECISION

Technical Associates, Inc., (TAI) of West Chester, Pennsylvania, protests the terms of invitation for bids (IFB) No. W25G1Q201700BE, issued by the Department of the Army for a reverse auction among vendors holding Federal Supply Schedule (FSS) contracts for no-tangle body harnesses, carabiners, and self-retracting lifelines.

We deny in part and dismiss in part the protest.

On March 7, 2012, the Army posted the IFB on the FedBid website for a reverse auction.¹ IFB at 1-2; Contracting Officer's Statement at 1. The solicitation restricted the competition to vendors holding FSS contracts and identified the response date as March 20. IFB at 1. The agency received 10 bids. TAI did not submit a bid.

¹ FedBid, Inc. is a commercial online procurement services provider that runs a website at FedBid.com, which among other things, conducts reverse auctions.

On March 19, TAI protested to our Office, objecting to the use of FSS procedures, the reverse auction, and the bid opening date. TAI contends that the Army should use “conventional bidding.” Protest at 2. The Army responds that it chose to use the FSS to procure these requirements because there were numerous FSS vendors that offer these items and that its policy is to use reverse auction procedures where, as here, the procurement is below the simplified acquisition threshold. See Agency Report at 2-3. In its comments, TAI argues only that there is no evidence that the use of FSS and reverse auction procedures will result in lower prices.

The FSS program gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. The procedures established for the FSS program are set forth in Federal Acquisition Regulation (FAR) subpart 8.4 and, although streamlined, they satisfy the requirement for full and open competition. See 41 U.S.C. § 152(3); FAR § 6.102(d)(3); Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3; Savantage Fin. Servs., Inc., B-292046, B-292046.2, June 11, 2003, 2003 CPD ¶ 113 at 6. Thus, limiting the pool of competition to vendors holding FSS contracts is legally permissible, even if an individual protester may be unable to compete because it does not hold an FSS contract. See Information Ventures, Inc., B-299422, B-299422.2, May 1, 2007, 2007 CPD ¶ 88 at 3.

With respect to TAI’s remaining complaints regarding the use of reverse auction procedures or the bid opening date, TAI has not demonstrated that it is an interested party to raise these concerns. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551 et seq., only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2012). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57at 2.

TAI has not demonstrated (nor argued) that it holds a relevant FSS contract, and we were unable to determine from our own review of the General Services Administration schedules that the protester holds a FSS contract. Because the record does not show that TAI holds an FSS contract, it is not an interested party to protest the terms of the solicitation. See FitNet Purchasing Alliance, B-309911, Nov. 2, 2007, 2007 CPD ¶ 201 at 2-3.

The protest is denied in part and dismissed in part.

Lynn H. Gibson
General Counsel