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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Kingdomware Technologies

File: B-407757

Date: January 31, 2013

LaTonya Barton for the protester.

Brian R. Reed, Esq., Department of Veterans Affairs, 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

Protest of an agency's limited source purchase order under the awardee's Federal Supply Schedule contract is denied, where the agency reasonably justified that only the awardee's product would meet the agency's needs.

DECISION

Kingdomware Technologies, of Waldorf, Maryland, a service-disabled veteran-owned small business (SDVOSB), protests the issuance of a sole source purchase order by the Department of Veterans Affairs (VA) to LiveProcess Corporation, of Verona, New Jersey, for emergency communication management software for VA's Medical Centers (VAMCs) in the Southern Tier of the Veterans Integrated Services Network (VISN) 12.¹

We deny the protest.

BACKGROUND

On August 23, 2012, VA issued request for quotations (RFQ) No. VA69D-12-O-0244, as a small business set-aside under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, for emergency

¹ VISN 12 covers Chicago-area facilities including Hines VA Hospital, the Jesse Brown VAMC, and the Federal Health Care Center (FHCC).

communication management software for the FHCC in North Chicago, Illinois.² The RFQ was issued on a brand name or equal basis, identifying LifeProcess Enterprise software as the brand name. The solicitation, however, did not identify any salient characteristic that equal products were required to meet.

On August 27, after receiving information from Kingdomware concerning the ability of SDVOSB vendors to provide emergency communication management software under their FSS contracts, VA set aside the brand name or equal RFQ for SDVOSBs. Kingdomware submitted the only quotation. After being informed by the FHCC that only the brand name system would satisfy FHCC's requirements, including that the software be compatible with that currently used by the VA and the Navy's facilities, VA canceled the RFQ. Kingdomware protested the cancellation of the RFP to our Office on September 24. We denied this protest on December 4, concluding that cancellation was proper because the RFQ failed to list any salient characteristics for use in evaluating equal products or identify a requirement that equal products be compatible with the brand name. See Kingdomware Techs., B-407389, Dec. 4, 2012, 2012 CPD ¶ 348.

On September 27, during our consideration of Kingdomware's prior protest, a different VA contracting office received a request for emergency communication management software for VISN 12, including the FHCC. Contracting Officer's Statement at 1. After conducting market research, the contracting officer concluded that only the LiveProcess software would satisfy all of the agency's needs. Id.

On September 28, the contracting officer issued a detailed, 8-page justification under FAR § 8.405-6 to limit the procurement to the acquisition of the LiveProcess software. In the justification, the contracting officer stated, among other things, that VA required software that was compatible with the VA and Navy facilities comprising the FHCC. The contracting officer explains that the VISN 12 hospitals and FHCC require the ability to coordinate emergency operations and responses, which includes the need to share information and documentation. Agency Report (AR), Tab 4, Limited Source Justification, at 5-6. The contracting officer also stated that the agency needed a software system that ties into the LiveProcess systems utilized in neighboring VISN 11 (which includes Michigan and Indiana). Id. The contracting officer found that, although there were software systems that may provide some of the agency's requirements, there was no other software system currently (other than LiveProcess) that could tie into the affiliated systems with all the capabilities required by the agency. Id.

² The FHCC is a unique partnership between VA and the Department of the Navy, combining the resources of the North Chicago VA Medical Center, four Navy clinics, and VA community based outpatient clinics in Illinois and Wisconsin. See <http://www.lovell.fhcc.va.gov/about>.

VA issued the purchase order to LiveProcess under its FSS contract, and this protest followed.³

DISCUSSION

The protester challenges the reasonableness of the agency's limited source justification, arguing that the agency does not require software that is compatible with that used by the Navy's clinics.⁴

Although orders under the FSS are generally exempt from the competition requirements of FAR part 6, ordering activities are required to justify limited source orders. FAR § 8.405-6. We will review an agency's use of a limited source justification under FAR part 8.4 for reasonableness. See XTec, Inc., B-405505, Nov. 8, 2011, 2011 CPD ¶ 249 at 5; STG, Inc., B-405082, B-405082.2, July 27, 2011, 2011 CPD ¶ 155 at 3.

Here, we find the agency's limited source justification to be reasonable. The record documents the VA's need for emergency communication software that performs a number of required functions and is compatible with the system used by the Navy facilities comprising FHCC. See AR, Tab 4, Limited Source Justification, at 5-6. Kingdomware does not contend that its software is compatible with the system used by the Navy clinics, but instead argues, without support or explanation, that the VA does not require software that is compatible with that used by the Navy's clinics. See Comments at 9. Although Kingdomware does not agree that

³ To the extent the protester argues that the agency's issuance of a FSS purchase order to LiveProcess violates the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127- 28 (2006), as we recently explained in Kingdomware Technologies-Recon., B-407232.2, Dec. 13, 2012, 2012 CPD ¶ 351, we will no longer consider protests based on the argument that the VA must consider setting aside procurements for SDVOSBs (or VOSBs) before procuring its requirements under the FSS.

⁴ The protester also complains that the agency did not publish its requirement for LiveProcess software thus the protester was not given an opportunity to compete. Comments at 9. This ground of protest, which was first raised in the protester's comments, is untimely. Our Bid Protest Regulations do not contemplate the piecemeal development of protest issues. 4 C.F.R. § 21.2(a)(2) (2012); Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 6-7.

the VA requires compatible software to meet its needs at the FHCC, the protester has failed to show that this is not a reasonable requirement.

The protest is denied.

Susan A. Poling
General Counsel