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## Decision

**Matter of:** Grant Thornton, LLP

**File:** B-408464

**Date:** September 25, 2013

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Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester. ChristinaLynn E. McCoy, Esq., Defense Logistics Agency, for the agency. Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging agency's decision to use a lowest-price, technically acceptable source selection scheme in a solicitation for financial audit services is denied where record reflects that prior to issuance of the solicitation, agency officials identified and documented reasonable bases for using such an approach that are not inconsistent with Federal Acquisition Regulation guidance regarding use of the lowest-price, technically acceptable source selection process.
  2. Protest challenging solicitation's provision for an online reverse auction during negotiations is denied where nothing in the record or the solicitation suggests that that conducting such an auction necessarily will result in a flawed competition.
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### DECISION

Grant Thornton, LLP, of Alexandria, Virginia, protests the terms of request for quotations (RFQ) No. 781754, issued by the Defense Logistics Agency for financial audit support services. Grant Thornton contends that the solicitation improperly employs a lowest-price, technically acceptable evaluation scheme and improperly provides for the use of an online reverse auction during negotiations.

We deny the protest.

### BACKGROUND

The RFQ, issued on May 17, 2013 in accordance with the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, sought

quotations from vendors holding FSS contracts under Schedule 520, Financial and Business Solutions (FABS), and Schedule 874, Mission Oriented Business Integrated Services (MOBIS). RFQ at 1-2.<sup>1</sup> The solicitation contemplated the establishment of multiple BPAs, with ordering periods of five years, under which the agency would issue fixed-price task orders. Id. at 4, 43.

In general terms, the solicitation sought independent public accounting firm services to validate the agency's "audit readiness." Id. at 1. The solicitation incorporated a performance work statement (PWS) that established the following three task areas: examination of agency financial systems and processes; independent verification and validation of critical corrective action plans; and examination of management assertions. Id. at 3, 11-37.

The solicitation provided that the BPAs would be established based on the lowest-priced, technically acceptable quotations,<sup>2</sup> and that technical acceptability would be evaluated considering two factors: technical/management capabilities and past performance. Id. at 42-43. The technical/management capabilities factor included the following five subfactors: ability to issue audit opinion in accordance with Government Accountability Office government auditing standards; vendor experience; key personnel; quality control assurance; and contractor teaming arrangement. Id.

With respect to price, vendors were required to complete and submit separate pricing schedules for each of the five BPA ordering years. Id. at 50; RFQ mod. No. 0006 at 2-4. Each pricing schedule included 10 labor categories specific to this procurement and the estimated hours for each labor category in each of the five BPA ordering years. RFQ mod. 0006 at 2-4. The PWS included labor category descriptions for each of the labor categories in the pricing schedules. RFQ at 31-34. Each labor category description identified certain minimum requirements in terms of years of experience with specific types of work, as well as licensure, certification, and educational requirements. Id.

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<sup>1</sup> The solicitation was modified six times. Unless otherwise noted, citations to the solicitation in this decision refer to the "conformed" version of the solicitation that was issued as part of modification No. 0003.

<sup>2</sup> Although the solicitation anticipated the establishment of BPAs under vendors' FSS contracts, some isolated sections of the solicitation referred to "proposals" from "offerors." Because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, we use the terms quotations and vendors throughout this decision.

Vendors were to complete the pricing schedules by appropriately “mapping” their FABS or MOBIS FSS labor categories to the labor categories in the schedules. RFQ mod. 0006 at 2. Vendors also were to quote discounted FSS rates for each labor category in each BPA ordering year. Id. For purposes of illustration, the pricing schedule for BPA ordering year two is shown below.

<b>BPA Year Two</b>					
Labor Category	FSS Labor Category	Est. Hours	GSA/FSS Rate	Discounted Rate	Est. Total Price
Information Systems (IS) Partner/Principal		9,207			
IS Senior Manager		25,495			
IS Audit Managers		30,122			
Senior IS Associates		65,350			
IS Staff		46,196			
Partner/Principal/Director		2,474			
Senior Managers		2,113			
Managers		4,310			
Senior Associates		56,239			
Staff		51,775			
<b>TOTAL</b>					

Id. at 3.

The solicitation advised vendors that “[t]he contracting officer intends to utilize on-line reverse auctioning to obtain the lowest price.” RFQ at 42. In this regard, the solicitation further advised that “[i]f the Contracting Officer determines that use of on-line reverse auctioning to conduct price negotiations is appropriate, the Contracting Officer will notify [vendors] of this decision and provide further instructions.”<sup>3</sup> Id.

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<sup>3</sup> In addition, the solicitation incorporated the clause at Defense Logistics Acquisition Directive section 52.215-9023, Reverse Auction (Nov. 2012), which provides as follows:

The Contracting Officer may utilize on-line reverse auctioning as a means of conducting price discussions under this solicitation. If the Contracting Officer does not conduct a reverse auction, award may be made on the basis of initial offers or following discussions not using reverse auctioning as a pricing technique.

RFQ at 79. This clause also generally describes online reverse auction procedures.

Finally, the solicitation required vendors to form contractor team arrangements whereby a minimum of 40 percent of the labor dollars for each task order issued under the BPAs would be dedicated to a small business team member. RFQ at 4-6, 40.

## DISCUSSION

Grant Thornton challenges several aspects of the solicitation's terms, including its use of a lowest-price, technically acceptable evaluation scheme, and the use of an online reverse auction during negotiations. We have considered all of Grant Thornton's arguments, and we conclude, based on the record, that none have merit. Grant Thornton's principal contentions are discussed below.

As stated above, Grant Thornton asserts that the solicitation improperly employs a lowest-price, technically acceptable selection scheme. Protest at 10-14; Comments at 5-16. Grant Thornton apparently believes that the solicitation should instead employ a price/technical tradeoff selection scheme. According to Grant Thornton, a lowest-price, technically acceptable source selection scheme is not appropriate because the services being procured are highly complex and involve a high degree of risk. Protest at 10-11; Comments at 6-15. In this regard, Grant Thornton contends that

only highly qualified [independent public accounting] firms with staff that meet strict professional, experience and educational requirements can even bid for the audit and attestation services. The services to be performed by the qualified [independent public accounting] firms for this procurement are subject to multiple accounting and auditing standards, laws and regulations reflecting the high degree of professional judgment and expertise that is expected of the accounting professionals who will conduct the audit and attestation services under the RFQ. The highly subjective nature of the work introduces complexities and risk to the procurement.

Comments at 3.

In support of its position that the nature of the services being procured prohibits the use of a lowest-price, technically acceptable selection scheme, Grant Thornton cites the following guidance found in FAR sections 15.101 and 15.101-2(a), respectively:

[I]n acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection.

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The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

Protest at 10 (quoting FAR §§ 15.101, 15.101-2(a)); Comments at 6-7 (same). Grant Thornton also cites various portions of the PWS which, according to Grant Thornton, reflect that the services being procured are highly complex and involve a high degree of risk.<sup>4</sup> Protest at 12-14; Comments at 10-15.

The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. Crewzers Fire Crew Trans., Inc., B-402530, B-402530.2, May 10, 2010, 2010 CPD ¶ 117 at 3; G. Koprowski, B-400215, Aug. 12, 2008, 2008 CPD ¶ 159 at 3. Mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. Cryo Techs., B-406003, Jan. 18, 2012, 2012 CPD ¶ 29 at 2; G. Koprowski, *supra*. For the reasons discussed below, we see no basis to object to the agency's decision to use a lowest-price, technically acceptable selection scheme.

The record reflects that prior to issuance of the solicitation, members of the agency's acquisition and program offices met to discuss the use of a lowest-price, technically acceptable source selection scheme. Agency Report (AR), Tab 12, Combined Acquisition Strategy Review Panel (ASRP)/Integrated Acquisition Review Board (IARB) Approval Meeting Minutes, at 4-5. During the meeting, the agency's program representatives stated that they understood that under a lowest-price, technically acceptable selection scheme, the agency could not elect to pay a premium for services that exceed the minimum requirements. *Id.* at 4. They also advised that for purposes of establishing the pool of vendors at the BPA level (rather than awarding task orders to individual vendors), the use of a lowest-price, technically acceptable source selection scheme was sufficient. *Id.* Finally, following the meeting, they suggested changes to the solicitation's technical evaluation criteria to ensure that the minimum requirements for technical acceptability were appropriate for the type of services being procured.<sup>5</sup> *See* AR, Tab 12, ASRP/IARB Approval Meeting Minutes, at 6.

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<sup>4</sup> In support of its argument, Grant Thornton additionally cites guidance contained in two Under Secretary of Defense memoranda. Protest at 10; Comments at 7-8. The two Under Secretary of Defense memoranda, however, contain only internal agency policy, rather than mandatory procurement regulations. Accordingly, to the extent that Grant Thornton alleges that the agency did not adhere to the memoranda, such allegation is not subject to our review. *See* 901 North Fifth Street, LLC, B-404997, B-404997.2, July 22, 2011, 2011 CPD ¶ 152 at 8-9; MediaNow, Inc., B-405067, June 28, 2011, 2011 CPD ¶ 133 at 3 n.2.

<sup>5</sup> The suggested changes were incorporated into the solicitation. *See* RFQ at 39.

Following this meeting, the contracting officer documented the following determination not to use a tradeoff process in this procurement:

There is no justification for using a Best Value trade-off for this requirement as there are no items to be traded off. There are certain requirements as set forth in the evaluation plan and the RFQ that must be met by the contractor in order to be determined technically acceptable. Once technical acceptability has been determined, price will be the governing factor. The customer did not see the need to evaluate technical/management approach (for the requirements in the PWS) because they consider firm licensure/certification to be enough indication of capability/knowledge and [because] technical/management approach will be evaluated at the [task order] level as needed. Task orders will be evaluated as either [lowest-price, technically acceptable] or trade-off based on the requirement and contracting determination.

AR, Tab 7, Acquisition Plan, at 8. In other words, the contracting officer determined that a tradeoff process was not justified for two reasons: the “customer” (i.e., the agency program office) believed that consideration of whether a vendor meets certain objective accounting industry licensure and certification standards would adequately reflect whether the vendor could perform the solicitation’s overarching requirements; and the agency reserved the right to make price/technical tradeoff decisions when awarding task orders under the BPAs based on a vendor’s specific technical approach to a specific task order requirement.

The terms of the solicitation are consistent with the reasoning found in the contracting officer’s determination. For example, the technical/management capabilities subfactors generally set forth minimum, objective, accounting industry-related qualifications that vendors must demonstrate in order to be found technically acceptable,<sup>6</sup> and the solicitation advises that a tradeoff evaluation process may be used at the task order level. RFQ at 38-40, 43.

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<sup>6</sup> For example, subfactor B, vendor experience, required a vendor to demonstrate minimum years of experience with certain types of financial audit work, including work under three specific industry standards. RFQ at 39. Subfactor C, key personnel, required a vendor to show that its key personnel possessed specific accounting industry licenses and certifications and that the key personnel had a minimum number of years experience with certain types of audit work. Id. at 39-40. Subfactor D, quality control assurance, required the submission of a recent peer review of the vendor’s audit work with at least a satisfactory rating. Id. at 40. As a separate challenge against the terms of this solicitation, Grant Thornton alleges that the solicitation fails to define what constitutes technical acceptability. Protest at  
(continued...)

Based on the above, we find that the agency acted within the bounds of its discretion when it determined not to use a tradeoff source selection process in this procurement. Further, we do not view the agency's decision to use a lowest-price, technically acceptable source selection scheme in this solicitation to be at odds with the guidance cited by Grant Thornton in FAR sections 15.101 and 15.101-2(a). In sum, on the record here, we view Grant Thornton's arguments to be mere disagreement with the agency's judgment regarding how best to accommodate its needs. See PDL Toll, B-402970, Aug. 11, 2010, 2010 CPD ¶ 191 at 2; Crewzers Fire Crew Trans., Inc., *supra*, at 4. This basis of protest is denied.

Grant Thornton also challenges the agency's contemplated use of an online reverse auction during negotiations. According to Grant Thornton, such a procedure is improper because the "complex" nature of the services being procured prevents an "apples to apples" comparison of vendor pricing. Protest at 18-20; Comments at 19-20. In support of this position, Grant Thornton points out that the solicitation directs vendors to "map" their FABS and MOBIS FSS labor categories to the ten labor categories established in the solicitation for this procurement. Protest at 19. Grant Thornton contends that because competing vendors may map different FSS labor categories to the same labor category in the solicitation, vendors may quote FSS labor categories with differing levels of experience, and "[t]here will be no way to fairly compare or assess what type of employee is being offered." Protest at 19.

It is fundamental that a contracting agency must provide a common basis for the preparation and the submission of quotations and not disparately evaluate vendors with respect to the same requirements. Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 13; AVL Books.Com, Inc., B-295780, Mar. 28, 2005, 2005 CPD ¶ 46 at 2.

As an initial matter, we note that the solicitation here requires vendors to submit completed pricing schedules with their quotations. RFQ at 50. Thus, even if we were to accept Grant Thornton's position that the solicitation precludes an "apples-to-apples" comparison of the services being priced, this alleged solicitation flaw would exist regardless of whether the solicitation contemplates an online reverse auction during negotiations.

In any event, we see no merit in Grant Thornton's argument. As discussed above, the PWS includes labor category descriptions that specify minimum requirements for each labor category in terms of years of experience with specific types of work

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17-18; Comments at 17-18. Based on the objective parameters reflected in the above-discussed subfactor evaluation criteria, as well as similarly objective parameters found in the other subfactor evaluation criteria, we see no merit in Grant Thornton's allegation.

and licensure, certification, and educational requirements. RFQ at 31-34. Because the FSS labor categories that vendors are to map to this solicitation's labor categories must meet these minimum requirements, the solicitation establishes a common basis for evaluating the services that the vendors will be pricing.

As a separate argument against the agency's contemplated use of an online reverse auction during negotiations, Grant Thornton asserts that the solicitation's requirement for vendors to form contractor team arrangements with small business team members also precludes an "apples-to-apples" comparison of pricing. Protest at 19-20; Comments at 19-20. In this context, Grant Thornton asserts that "[b]ecause of the way the RFQ is worded, offerors do not submit a blended rate for each labor category," but instead "will submit a [pricing schedule] for each [contractor team arrangement] member." Protest at 19-20. Because contractor team members may map different FSS labor categories to the solicitation's labor categories, and because some team members may be unable to map any of their FSS labor categories to the solicitation's labor categories, Grant Thornton maintains that "an apples-to-apples comparison that is required for a reverse auction [is] impossible with this procurement." Id. at 20.

We view Grant Thornton's argument as raising a concern that primarily relates to the solicitation's scheme for evaluating initial pricing rather than the solicitation's provision for a potential online reverse auction during negotiations. We find it unclear why Grant Thornton believes that vendors may not submit blended rates (i.e., one rate for the team as a whole for each labor category) or why Grant Thornton believes that vendors should submit separate pricing schedules with differing rates for each team member. We see nothing in either the solicitation or the vendor questions and agency responses that would preclude vendors from submitting blended rates, or that would require vendors to submit separate, differing rates for each team member.

Further, we see the submission of blended rates as a logical mode of responding to the solicitation. However, if one or more vendors were to submit multiple, differing rates for one or more labor category, we believe it may be necessary for the agency to calculate blended rates (and do so in a reasonable manner) for purposes of evaluating vendor pricing on a common basis and for purposes of administering any task orders under any resulting BPA.<sup>7</sup> That said, because there are no express solicitation provisions to support Grant Thornton's argument, we see no basis to conclude that application of the terms of the solicitation as they exist necessarily will result in a flawed competition. Therefore, we see no basis to sustain this ground of protest.

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<sup>7</sup> Alternatively, the agency could request that the vendor submit revised pricing in the form of blended rates.



To the extent that Grant Thornton's argument applies to the manner in which the agency will evaluate pricing in connection with an online reverse auction, we similarly see no basis sustain the protest. In this regard, the solicitation is not explicit with respect to what specific pricing will be the subject of bidding in the online reverse auction. See AR, Tab 24, Draft Reverse Auction Notification Letters. While it is conceivable that certain bidding arrangements could lead to a flawed evaluation of pricing, the details of the bidding structure are unknown at this juncture. Therefore, we conclude that at this time there is no basis to object to the solicitation's provision regarding an online reverse auction during negotiations.

The protest is denied.

Susan A. Poling  
General Counsel