



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Veterans Healthcare Supply Solutions, Inc.

File: B-409888

Date: September 5, 2014

Gary M. Skura for the protester.

Mary G. Courtney, Esq., Department of Veterans Affairs, and Michael D. Tully, Esq., General Services Administration, for the agencies.

Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation provision requiring all members of a contractor team arrangement to hold Federal Supply Schedule contracts under one identified schedule and special item number (SIN) is unduly restrictive of competition is denied where all of the supplies to be procured are within the one identified schedule and SIN.

DECISION

Veterans Healthcare Supply Solutions, Inc. (VHSS), of Jacksonville, Florida, challenges the terms of request for quotations (RFQ) No. VA119-14-Q-0004, issued by the Department of Veterans Affairs (VA) to holders of General Services Administration (GSA) Federal Supply Schedule (FSS) contracts for vital signs monitors and accessories. VHSS argues that the solicitation is unduly restrictive because it requires all members of a contractor teaming arrangement (CTA) to have FSS contracts under the identified schedule and special item number (SIN).

We deny the protest.

BACKGROUND

The RFQ was issued on February 25, 2014, as a service-disabled, veteran-owned small business (SDVOSB) set-aside to holders of FSS contracts, pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation contemplated the establishment of a single blanket purchase agreement (BPA) for a base year and 4 options years, under which fixed-price delivery orders

would be placed on an “as needed” basis. RFQ at 5-6. Vendors were informed that all of the supplies being procured must be on a FSS contract under Schedule 65 II A (Medical Equipment and Supplies) and SIN A-50A (Vital Signs Monitors).¹ Id. at 1, 5.

Relevant to the protest here, the RFQ included the following provision regarding potential contractor team arrangements (CTA):

Contractors shall be a Department of Veterans Affairs (VA) Federal Supply Schedule (FSS) holder for Schedule 65-II A, by the date and time for receipt of quotations All items quoted must be on the Contractors [sic] Federal Supply Schedule or the FSS of an Original Equipment Manufacturer (OEM) contractor with whom the contractor has a teaming arrangement by the time of submission of the quote. Each team member must have an FSS Schedule contract. In the event that [the] schedule contractor is not the OEM, there shall be a teaming arrangement in place by the due date for receipt of quotations that will state supplies provided by the schedule contractor will not void the manufacturer’s warranty and the manufacturer’s warranty remains in effect for the five year term of the BPA, inclusive of the options periods.²

Id. at 37.

Following the issuance of the solicitation, the agency informed VHSS that the agency interpreted the RFQ as requiring each member of a CTA to have a FSS contract under the identified schedule and SIN. See Protest at 1; Agency Report (AR), June 26, 2014, at 1. VHSS protested this requirement to our Office prior to the due date for receipt of quotations.

DISCUSSION

VHSS argues that the RFQ is overly restrictive and precludes its participation. VHSS asserts that it is a SDVOSB with a FSS Schedule 65 II A contract, and that it

¹ Each GSA Schedule is composed of SINs, which are “a categorization method that groups similar products, services, and solutions together to aid in the acquisition process.” See <http://www.gsa.gov/portal/category/100615>; see also FAR § 8.401.

² Similarly, the solicitation’s submission instructions provided that “[q]uoted product must be on contractors’ [sic] FSS contract at time of RFQ submission or listed on the FSS contract of an OEM with whom there is a teaming agreement. Each team member must have a FSS contract.” RFQ at 40.

has a current teaming agreement in place with CAS Medical Systems, Inc. (an OEM),³ which has a FSS contract under the required SIN. VHSS contends that there is no valid reason for the solicitation to restrict CTAs to only those entities that have both the FSS Schedule contract and SIN for the items here, and argues that the RFQ should permit all applicable FSS contract holders who have a team arrangement with the OEM to compete. Protest at 2.

The agency responds that the requirement that each member of a CTA have an FSS contract under the applicable schedule and SIN is not unduly restrictive or otherwise improper. The VA points out that this procurement is for supplies contained only under SIN A-50A, and that VHSS's FSS contract does not have these supplies. The agency contends that allowing a vendor (such as the protester) to team with an OEM that would provide all of the required items while the vendor provides none would be contrary to GSA's guidelines for CTAs and would undermine the SDVOSB set-aside. AR, June 26, 2014, at 5.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services.⁴ See generally FAR subpart 8.4. Where an agency announces its intention to order from an existing FSS, all items quoted and ordered are required to be on the vendor's schedule contract as a precondition to its receiving the order. Desktop Alert, Inc., B-408196, July 22, 2013, 2013 CPD ¶ 179 at 4; Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n.1.

In FSS buys, as in other procurements, a contracting agency has the discretion to determine its needs and the best method to accommodate them. 41 U.S.C. §§ 3306(a)(1)(A), (2)(B) (2012); Boehringer Ingelheim Pharm., Inc., B-294944.3, B-295430, Feb. 2, 2005, 2005 CPD ¶ 32 at 4. Where a protester challenges a solicitation provision as unduly restrictive of competition, the procuring agency must establish that the provision is reasonably necessary to meet the agency's needs. See Total Health Res., B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 3. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. HealthDataInsights, Inc.; CGI Federal Inc., B-409409 et al., Apr. 23, 2014, 2014 CPD ¶ 134 at 4; SMARTnet, Inc., B-400651.2, Jan. 27, 2009, 2009 CPD ¶ 34 at 7.

³ CAS Medical Systems is a small business, but not a SDVOSB concern. See <http://www.gsaelibrary.gsa.gov/ElibMain/home.do>

⁴ The procedures established for the FSS program, although streamlined, also satisfy the requirement for full and open competition. 41 U.S.C. § 152(3) (2012); FAR § 6.102(d)(3); Edmond Computer Co.; Edmond Scientific Co.; B-402863, B-402864, Aug. 25, 2010, 2010 CPD ¶ 200 at 2 n.2; Savantage Fin. Servs., Inc., B-292046, B-292046.2, June 11, 2003, 2003 CPD ¶ 113 at 6.

A CTA under GSA schedule contracts is a written agreement between two or more schedule contractors to work together to meet an agency's requirements and to maximize a vendor's competitiveness. See GSA CTA Guidance, www.gsa.gov/contractorteamarrangements. Ordering activities may, because of the existence of CTAs, procure a total solution rather than making separate buys for each part of a requirement. Id. The CTA details the responsibilities of each team member. Id. CTAs under GSA schedule contracts differ from traditional prime contractor-subcontractor arrangements in that: (1) each team member has privity of contract with the government for the goods or services that it is providing, (2) each team member is responsible for its duties laid out in the CTA document, and (3) each team member must have a GSA schedule contract.⁵ Id.; see also Brooks Range Contract Servs., Inc., B-405327, Oct. 12, 2011, 2011 CPD ¶ 216 at 4.

In response to our request, GSA provided the following comments on VHSS's protest:

Ordinarily, Contractor Team Arrangement (CTA) members' combined capabilities are aimed at a "total solution" and allow for the members collectively to meet government needs that each may not otherwise be capable of doing individually. In a conventional CTA, each CTA member would have at least one SIN on its respective schedule contract in furtherance of meeting the Government's needs. Here, however, the VA is setting up a BPA for a single SIN only (the items to be procured are solely available under Schedule 65II-A, SIN A-50A).

* * * * *

If the procurement at issue is for a single SIN, then it would stand that both/all members of a CTA would need to have the particular SIN on their respective FSS contract [F]or the RFQ at issue, if a CTA is being used (which is permitted by the solicitation terms), both/all team members would need to hold a Schedule 65II-A contract with SIN A-50A.⁶

⁵ The ordering activity is then invoiced at each team member's unit prices or hourly rates as agreed in the task or delivery order, or GSA Schedule BPA. Id.

⁶ GSA also noted that VHSS's teaming arrangement was focused on establishing a prime/subcontractor agreement between VHSS (as prime) and CAS Medical (as subcontractor) and as such, would seemingly preclude the issuance of a BPA to VHSS under the RFQ. GSA Comments, July 31, 2014, at 2-3.

GSA Comments, July 31, 2014, at 2.

We find that the solicitation requirement here--that each member of a CTA hold its own FSS contract under schedule 65 II and SIN A-50A--is not unduly restrictive of competition or otherwise improper. As noted above, all the vital signs monitors that will be procured under the BPA are on a single SIN, and VHSS's FSS contract does not contain these vital signs monitors and this SIN. Consequently, VHSS would not under its CTA with CAS Medical provide any of the required supplies from its own FSS contract. This would be inconsistent with GSA's view that "CTA members are to be prime contractors with respect to each member's particular [items] being offered as part of a total solution." GSA Comments, July 31, 2014, at 3. Rather, VHSS's interpretation of the solicitation's CTA requirement would result in a situation where VHSS would not be in privity of contract with the government, and would not actually receive any orders under its schedule contract.⁷ Accordingly, we find that the RFQ's restriction of CTAs to only those under which all members have schedule contracts under the identified schedule and SIN is reasonable.

VHSS does not dispute that all of the vital signs monitors it plans to quote would come from CAS Medical's schedule contract, and none from its own FSS contract. Rather, VHSS points out that CAS Medical is not an SDVOSB concern, and therefore could not directly compete for an order here.⁸ VHSS Comments, Aug. 5, 2014, at 1. Quite simply, VHSS's purported CTA with CAS Medical was for the purpose of allowing it to receive FSS orders for supplies not on its FSS contract, while allowing CAS Medical to participate in a procurement for which it, as a non-SDVOSB concern, was not eligible. We agree with the VA and GSA that such an arrangement is inconsistent with both the rules for conducting FSS procurements and the purpose for setting aside such procurements for SDVOSBs.

The protest is denied.

Susan A. Poling
General Counsel

⁷ VHSS's arrangement with CAS Medical does not appear to be a CTA at all, at least as understood by GSA for FSS procurements.

⁸ VHSS also contends that it is unnecessary for each CTA member to meet the procurement's set-aside requirement, notwithstanding express GSA guidance to the contrary. VHSS Comments, Aug. 5, 2014, at 1; see GSA Small Business Set-Aside Frequently Asked Questions, <http://www.gsa.gov/portal/content/113371#13> ("All members of the CTA must be small (or whatever sub-set the order is set-aside for) for the CTA to be eligible for that order.").