



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

Decision

Matter of: SageCare, Inc.

File: B-411260

Date: June 23, 2015

David M. Snyder, SageCare, Inc., for the protester.
Jeanne S. Morris, Esq., Department of Veterans Affairs, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that the agency improperly excluded protester from consideration for award of an emergency delivery order is denied where the record shows that the agency's decision was reasonable under the circumstances.

DECISION

SageCare, Inc., of Tampa, Florida, protests the award of purchase order No. VA241-15-P-0353 to Innovative Federal Operations Group, LLC (IFOG), of Vista, California, by the Department of Veterans Affairs (VA) for the delivery of 20,000 gallons of fuel oil to an agency facility in West Haven, Connecticut. SageCare argues that the agency improperly failed to consider the firm for award of the order.

We deny the protest.

BACKGROUND

The agency awarded purchase order No. VA241-15-P-0353 to IFOG on November 26, 2014, as an emergency order for delivery of fuel oil to the West Haven VA Medical Center utilizing procedures set forth in Federal Acquisition Regulation (FAR) §13.106-1(b)(1)(i). Those procedures permit agencies to solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available, such as for urgency reasons.¹

¹ The agency states that it utilized noncompetitive procedures set forth in FAR § 6.302-2. Legal Memorandum at 6. However, the record clearly shows that the
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Agency Report (AR), exh. C, Purchase Order, at 1; exh. F, Contracting Officer's Statement, at 1; see also AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 2 (describing procedures utilized by agency for emergency procurement).

The record shows that on November 25, 2014, the contracting officer for the emergency procurement received a requirement for the emergency order of fuel to be delivered to the West Haven VA Medical Center on November 28. Hearing Transcript (Tr.) at 248:16-249:11. The contracting officer testified that he attempted to contact two vendors identified by a colleague. Tr. at 260:1-22. He was not able to contact the first vendor, but was able to contact the second vendor, which confirmed it could deliver the fuel on November 28. Id. at 249:6-11. However, the contracting officer was subsequently told that the fuel was required on November 26, which required him to switch to a third vendor, IFOG, because the second vendor could not deliver on that day. Id. at 249:12-250:11. After selecting IFOG as the vendor, and just before placing the order, the contracting officer was made aware of the pending protest by AeroSage. He was informed that due to the protest, the emergency award should not be given to either AeroSage or SageCare.² Id. at 256:8-258:2.

DISCUSSION

SageCare's only argument is that the agency's decision to not consider it for award of the emergency order was unreasonable. Protest at 2. The protester argues that the contracting officer's hearing testimony shows that SageCare was unreasonably excluded from consideration for the emergency award even though it had allegedly

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agency's rationale for limiting competition was based on the procedures set forth in FAR § 13.106-1. See AeroSage LLC, B-410648.2, B-410648.3, Mar. 20, 2015, 2015 CPD ¶ 111 at 3-4. In this regard, the award at issue here is related to a prior protest by AeroSage LLC. AeroSage and SageCare apparently have common ownership. See id. at 1; see also Protest at 3. In AeroSage, our Office considered the reasonableness of the VA's decision to cancel solicitation No. VA241-15-Q-0003, a separate, but related, procurement under which both SageCare and AeroSage submitted proposals. Id. at 3-4. On March 12, 2015, we conducted a hearing in that protest which is part of the record here. We denied the Aerosage protest, in part, because the VA's decision to award IFOG the contract at issue here was reasonable under the circumstances. See AeroSage LLC, supra, at 4.

² In this regard, the contracting officer testified that he was advised to not consider AeroSage or SageCare for award because the emergency order should go to an uninterested party, that is, a party not involved in the pending protest. Tr. at 256:6-258:20.

submitted a lower price for the fuel oil delivery under the solicitation that was cancelled. Id. However, our review of the record does not provide a basis to question the agency's decision to award the emergency order to IFOG.

When conducting a procurement utilizing simplified acquisition procedures, contracting officers must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the government. 41 U.S.C. § 3305(d); FAR § 13.104; Info. Ventures, Inc., B-293541, Apr. 9, 2004, 2004 CPD ¶ 81 at 3. As an exception to this general competition requirement, a contracting officer may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source was reasonably available, such as under urgent circumstances. FAR § 13.106-1(b)(1)(i). We review an agency's decision to limit competition under such circumstances for reasonableness. Critical Process Filtration, Inc., B-400746 et al., Jan. 22, 2009, 2009 CPD ¶ 25 at 3.

As discussed in AeroSage LLC, supra, we found the VA's decision to award the emergency order to IFOG to be reasonable under the circumstances. AeroSage LLC, supra, at 4-5. This includes the contacting officer's decision to limit his consideration to the three vendors made known to him as he researched vendors for the requirement, as described above. With respect to SageCare's specific allegation, the record shows that the contracting officer was not aware of the protested procurement until after he selected IFOG for award. Tr. at 257:19-258:2. He also testified that he did not know the particulars of the solicitation for which both AeroSage and SageCare had submitted proposals. Id. at 255:22-256:5. Finally, there is no evidence in the record to suggest that the contracting officer knew that SageCare had submitted a proposal for that procurement, or that he had any knowledge of the particulars of SageCare's proposal.

Thus, the record shows that at the time the contracting officer made the decision to award the emergency order to IFOG, he had no reason to consider SageCare for that award. In addition, when the contracting officer was later asked by another contracting official to confirm that the award was not going to be made to AeroSage or SageCare, the decision to award the emergency order to IFOG had already been made. As a result, there is no evidence that SageCare was improperly barred from consideration for this emergency order.

The protest is denied.

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General Counsel