



Decision

Matter of: Training, Rehabilitation & Development Institute, Inc.

File: B-418480

Date: May 13, 2020

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DIGEST

Protest alleging that agency improperly is conducting an acquisition on a competitive basis rather than on a sole-source basis pursuant to the Javits-Wagner-O'Day Act is denied where record shows that the services being solicited are not the same as the services provided under prior contracts that had been awarded on a sole-source basis pursuant to the Javits-Wagner-O'Day Act.

DECISION

Training, Rehabilitation, & Development Institute, Inc. (TRDI), of San Antonio, Texas, protests the terms of request for quotations (RFQ) No. W91151-20-Q-0016, issued by the Department of the Army for washer and dryer maintenance and repair services at Fort Hood, Texas. TRDI alleges that the contract should be awarded to the firm on a non-competitive, sole-source basis pursuant to the Javits-Wagner-O'Day (JWOD) Act.

We deny the protest.

BACKGROUND

Under the provisions of the JWOD Act, the Committee for Purchase from People Who Are Blind or Severely Disabled, now operating as the U.S. AbilityOne Commission, has the exclusive authority to establish and maintain a procurement list of supplies and services provided by qualified non-profit agencies for the blind or significantly disabled under the AbilityOne program. 41 U.S.C. § 8502(a), 8503(a); 41 C.F.R. § 51-2.8. The JWOD Act states that the procurement list is the mandatory source for federal agencies

for any good or service on that list. 41 U.S.C. § 8504(a). In short, the JWOD Act provides authority for noncompetitive acquisitions for specified supplies or services listed on the AbilityOne Commission's procurement list to be awarded to the non-profit agency designated for award of the requirement, which in this case would be TRDI. See Federal Acquisition Regulation (FAR) 6.302-5(b)(2); see *also* FAR subpart 8.7.

The facts of this case are straight-forward and not in dispute. In February 2003, the Army entered into a contract with TRDI for the provision of washers and dryers at Fort Hood on a leased basis, with TRDI providing the leased machines. Agency Report (AR), exh. 11, TRDI's 2003 Contract. That contract described the services to be provided by TRDI as follows:

The Contractor shall provide machines and related services in accordance with the Contract, in troop billet laundry rooms, laundromats, gyms, child development centers, and other facilities located at Fort Hood. The Contractor shall provide Contract services to include these functions and the tasks associated with their accomplishment: Indirect Work such as phase-in and phase-out, work control, preparation of reports and logs, and other tasks; and Direct Work such as providing machines, removing, storing, adding, and relocating machines, performing preventive maintenance, repairing and/or replacing machines, and performing project work in accordance with Contract standards.

Id. at 15.

Shortly after execution of the 2003 contract, the record shows that the AbilityOne Commission amended its procurement list to include this particular requirement. The AbilityOne Commission published a notice in the Federal Register that provided, in its entirety, as follows:

Service Type/Location: Installation Support Services, Fort Hood, Texas.

NPA [non-profit agency]: Training, Rehabilitation, & Development Institute, Inc., [TRDI] San Antonio, Texas.

Contract Activity: III Corps and Fort Hood Contracting Command, Fort Hood, Texas.

68 Fed. Reg. 35379 (June 13, 2003).

The record shows that the agency and TRDI entered into three subsequent contracts for the lease of washers and dryers, along with ancillary services such as maintenance, installation, relocation, storage and uninstallation of the machines. All three of those contracts were substantially the same as the original 2003 contract. AR, exh. 12, the 2008 Contract; exh. 13, the 2013 Contract; exh. 14, the 2019 Contract. The third of these contracts, the 2019 contract, was for a period of performance of just 6 months

because the agency was about to change the way it met its requirements for washers and dryers at Fort Hood, as described below. AR, exh. 13, the 2019 Contract, at 16.

In September 2018, the agency awarded a contract to another concern for the sale and installation of washers and dryers at Fort Hood. TRDI filed a protest with our Office in connection with the award of that contract, maintaining that, because it was the mandatory JWOD contractor for the installation of washers and dryers at Fort Hood, the inclusion of those installation services under the contract awarded for the purchase of the washers and dryers was improper. We denied TRDI's earlier protest, concluding that the installation services included under the contract for the sale of the washers and dryers were not services that were contemplated under the previous TRDI contracts. *Training, Rehabilitation & Development Institute, Inc.*, B-417265, May 3, 2019, 2019 CPD ¶ 169.

The agency issued the RFQ that is the subject of the current protest on January 16, 2020. That solicitation contemplates the award of a contract to provide maintenance and repair services for the agency's current inventory of government-owned washers and dryers that it purchased under the September 2018 contract. TRDI timely filed a protest challenging the terms of that solicitation before the February 18 deadline for submission of quotations.

DISCUSSION

TRDI argues that the agency is required to procure washer and dryer repair and maintenance services from it on a non-competitive, sole-source basis because it is the designated JWOD Act non-profit agency for such services, and because these services are included on the AbilityOne Commission's procurement list. According to the protester, the procurement list's designation of "installation support services" includes all of the services enumerated in the contracts previously awarded to it (either individually or collectively), and among those services is the provision of washer and dryer repair and maintenance. TRDI maintains that the previous contracts expressly contemplated that TRDI would perform washer and dryer repair and maintenance services on any washers and dryers located at Fort Hood, regardless of whether the equipment is government-owned or contractor-supplied. TRDI therefore reasons that, even though the agency has elected to purchase its own washers and dryers rather than lease washers and dryers from TRDI, it nonetheless is required to obtain repair and maintenance services from TRDI on a sole-source basis pursuant to the JWOD Act.

We find no merit to the protest. TRDI's position is based on a flawed premise, namely, that each of the various individual services enumerated in the prior contracts is required to be procured from TRDI, regardless of whether the services currently being solicited are for the same overall requirement as the overall requirement outlined in the prior contracts. There is no basis to support TRDI's faulty premise.

We note at the outset that the confusion here stems largely from the fundamentally ambiguous description of the services on the AbilityOne Commission's procurement list.

As noted, the procurement list identifies the requirement--without any elaboration or definition--as "installation support services." As the Army correctly notes, installation support services could include virtually any services that are routinely acquired by the Army at Fort Hood that might fit under such a non-specific, wide-ranging rubric including solid waste services, grounds maintenance services, portable latrine services, fire protection services, preventive maintenance services, stray animal control services, elevator maintenance services, pest management services, heating, ventilation, and air conditioning chemical services, and electronic security services. Army Response to AbilityOne Commission's Statement, at 4.

We asked the AbilityOne Commission for its views regarding the meaning of "installation support services" as that phrase is defined on the procurement list. In its response to our request, the Commission advances the position that "installation support services" includes the repair and maintenance of washers and dryers.

While we accord some weight to the views of the Commission, its position is contrary to the plain meaning of the phrase "installation support services" as those services are described in the statement of work included in the Army's 2003 contract--as well as the subsequent contracts--with TRDI.

A fair reading of the 2003 contract, as well as TRDI's other prior contracts, shows that the agency was--first and foremost--leasing washers and dryers for use by the resident population at Fort Hood. The agency also wanted to ensure that the leased machines remained in good working order; that they would be located where the agency wanted them to be installed; and that they could be rearranged, stored and removed based on changing requirements throughout the life of the contracts.

Thus, the 2003 contract (as well as TRDI's other contracts) included these ancillary services as part of the overall "bundle" of services being purchased. Nonetheless, there can be no doubt that, in the absence of the leased washers and dryers themselves, the agency would have no need for the other, ancillary, services under those contracts. Stated differently, the TRDI leases included a number of ancillary or incidental services, but these ancillary or incidental services were only to ensure the ongoing availability of the principal requirement: properly-functioning, properly-located, properly-installed leased machines.

Subsequent to entering into these lease agreements with TRDI, the agency fundamentally changed its strategy for meeting its principal requirement--washers and dryers available for use by the resident population of Fort Hood--by electing to purchase machines using competitive procedures, rather than continuing to lease machines from TRDI on a sole-source basis. Of note, there is no evidence to show either that TRDI competed for the contract to sell the washers and dryers to the Army, or that it objected to the agency's actions in obtaining the purchased machines using competitive procedures. Thus, as matters stand, the agency is now meeting its principal requirement through machines that it owns, and these machines were acquired outside of the framework of the JWOD program.

Because the agency now owns its washers and dryers, it no longer needs to lease the machines from TRDI, and we have no basis to conclude that the Army is required to obtain the remaining--ancillary--services on a sole-source basis from TRDI under the JWOD program. As discussed, the central object of the agency under both the earlier and the current arrangements was to have available washers and dryers for use by the resident population of Fort Hood. Under TRDI's prior contracts, the ancillary services were only necessary in order to keep the inventory of leased machines in good working order, and available at locations, and in quantities, identified by the agency. Those ancillary services were never the central object of the prior contracts. It follows that there is no basis for us to conclude that the Army is required to continue obtaining those ancillary services on a sole-source basis from TRDI. Our conclusion here is consistent with the conclusion in our prior decision, *Training, Rehabilitation & Development Institute, Inc., supra*, namely, that the agency was not required to obtain separately the installation services that were necessary as a consequence of its purchase of the current inventory of washers and dryers.

Finally, as noted, TRDI also suggests that its original 2003 contract contemplated that TRDI would be required to perform the ancillary services on all washers and dryers located at Fort Hood, whether owned by the Army, or supplied by TRDI under lease. A review of that contract does not support TRDI's argument. Specifically, the 2003 contract included the following language:

GOVERNMENT FURNISHED PROPERTY. The Government will not offer any Government-Furnished Property and Services. However, the Contractor may perform maintenance and repair work of installed machines in the laundromats and other facilities where machines are installed, and use utilities connected to equipment for the sole purpose of fulfilling the requirements of the Contract.

AR, exh. 11, 2003 TRDI's Contract, at 21 (emphasis supplied). This provision demonstrates conclusively that there were no government-owned washers or dryers being made available under TRDI's 2003 contract. Because there were no government-owned washers and dryers being provided under the 2003 contract, there is no basis for our Office to conclude that the 2003 contract contemplated TRDI performing the ancillary services on such government-owned equipment. It follows that there is no basis for us to conclude that the agency is required to obtain the ancillary services from TRDI on a sole-source basis, regardless of whether the machines were leased machines, or were owned by the government.

As a final matter, we point out that the pricing for all of TRDI's contracts was on either a lump-sum monthly basis or a per-machine, per-month basis. AR, exh. 11, TRDI's 2003 Contract at 46-88; exh. 12, TRDI's 2008 Contract, at 3-47; exh. 13, TRDI's 2013

Contract, at 4-46; exh. 14, TRDI's 2019 Contract, at 41-48.¹ Notably, pricing for the lease of the machines on the one hand, and the ancillary services on the other hand was not separate. For example, the first contract line item of from TRDI's 2013 contract provided as follows:

Unit of issue "Unit" is defined as a "Machine Month." The unit price represents the cost for lease and maintenance services (as defined in the PWS [performance work statement]) per month per machine. (e.g. 1502 Washers x 12 months = 18,024 "machine months/units")

AR, exh. 13, TRDI's 2013 Contract, at 4.

This provides still further evidence that the agency was, in effect, paying fixed prices for the leased machines in good working order, and the ancillary services were merely a necessary element to ensure that machines in good working order would at all times be available.

In view of the foregoing discussion, we deny TRDI's protest.

The protest is denied.

Thomas H. Armstrong
General Counsel

¹ TRDI's original 2003 contract included line items for phase-in activities, and also for initial modification of preexisting dryer venting infrastructure located at Fort Hood prior to installation of the leased dryers. AR, exh. 11, TRDI's 2003 Contract, at 47-48. These one-time elements of contract performance did not appear in the option years of the 2003 contract, or in any of the subsequent contracts.