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**Comptroller General
of the United States**

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

Decision

Matter of: Alluviam LLC

File: B-297280

Date: December 15, 2005

Greg Ouzounian for the protester.

Capt. Joseph V. Fratarcangeli, Department of the Army, for the agency.

Jacqueline Maeder, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly eliminated protester's proposal from consideration for failure of its offered equipment to be included on the Federal Supply Schedule (FSS); although inclusion of protester's equipment on the FSS was pending, this was not sufficient where solicitation indicated that equipment had to be on the FSS at time of proposal submission.

DECISION

Alluviam LLC protests the rejection of its proposal under synopsis/solicitation No. W9124Q-05-R-EPGDH53, issued by the Department of the Army for commercially available equipment to prevent, deter and respond to terrorist attacks. Alluviam's proposal was rejected because its equipment was not on the General Services Administration (GSA) Federal Supply Schedule (FSS).

We deny the protest.

The combined synopsis/solicitation, issued August 4, 2005, contemplated the award of a fixed-price contract for commercially available equipment for the Department of Homeland Security, Office of State and Local Government Coordination and Preparedness Commercial Equipment Direct Assistance Program, to assist smaller communities in acquiring equipment to prevent and respond to terrorist attacks. The procurement was to be completed in two phases—proposal evaluation (based on factors set forth in the solicitation) in phase I and, for the most highly-rated proposals, a demonstration of equipment for a panel of subject matter experts in phase II. Proposals not selected for phase II demonstrations would be ineligible for award. The solicitation stated that “Vendors interested in submitting a proposal

must be on and have the equipment available from the [GSA] schedule.” Solicitation at 2. Offerors were to provide their GSA contract number on the title page of their proposals. Id. at 3.

The agency received a number of proposals, including Alluviam’s, by the August 31 due date. On the title page of its proposal, Alluviam indicated that it did not currently hold an FSS contract, but that GSA was expediting review of its equipment for inclusion on the FSS. Alluviam specified the FSS on which its equipment would be listed, and also listed a GSA employee’s name and phone number to call to check on its pending award.

During the phase I evaluation, the Army concluded that Alluviam’s proposal was unacceptable for failure to comply with the solicitation requirement that offerors be on and have the equipment available from the FSS schedule. By letter dated September 14, the agency notified Alluviam of this determination, and that its proposal would not be considered for award.

Alluviam essentially challenges the agency’s interpretation of the solicitation; it does not read the solicitation as requiring offerors’ equipment to be on the FSS before the time of award, and asserts that its proposal should have been found acceptable based on the fact that the proposal clearly indicated its pending FSS award status, and included the name of the cognizant GSA official to allow the agency to verify that status.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

We agree with the agency that the solicitation required offerors’ equipment to be included on an FSS contract prior to the time of award. In this regard, the solicitation’s statement that offerors interested in submitting proposals must be on and have their equipment available from the FSS, and the requirement that offerors must provide their FSS contract number with their proposals, clearly connoted the agency’s intention that offerors hold an FSS contract at the time of proposal submission. Conversely, there was nothing in the solicitation to indicate that the FSS requirement could be satisfied up until the time of award. This requirement was a logical one when viewed in light of the two-phase evaluation scheme—the agency had to be able to determine during phase I whether the FSS requirement was met in order to determine which proposals would advance to the phase II evaluation. While the protester believes the agency should have assumed that its equipment would be included on the FSS based on its assurances to that effect, there is no basis for requiring an agency to make such an assumption where, as here, the solicitation requires proposals to contain evidence of inclusion on the FSS.

We conclude that Alluviam's proposed equipment properly was evaluated as not satisfying the FSS requirement, and that the agency properly rejected the proposal on this basis.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ To the extent that Alluviam argues that offerors should not have been required to hold an FSS contract until the time of contract award, its protest is based on an alleged impropriety on the face of the solicitation. Such protests are untimely where, as here, they are filed after the closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1) (2005).