



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Spectrum Security Services, Inc.

File: B-406474

Date: June 13, 2012

Timothy H. Power, Esq., Power Law Office, for the protester.
Song U. Kim, Esq., Department of Homeland Security, Immigration and Customs Enforcement, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected quotation in Federal Supply Schedule (FSS) acquisition conducted under Federal Acquisition Regulation (FAR) part 8.4 is denied where protester's FSS contract did not include all items and rates required by the solicitation.

DECISION

Spectrum Security Services, Inc., protests the exclusion of its quotation from consideration under request for quotations (RFQ) No. HSCEDM-12-Q-00001, issued by the Department of Homeland Security, Immigration and Customs Enforcement, for detention officer services in the southwest United States.

We deny the protest.

The agency issued the RFQ via the General Services Administration (GSA) eBuy system on January 6, 2012, under Federal Acquisition Regulation (FAR) Subpart 8.4, to vendors holding GSA Federal Supply Schedule (FSS) 84, Special Item Number (SIN) 246-54 (protective service occupations) contracts. The RFQ contemplated the establishment of a single blanket purchase agreement for a base year and four option years, for detention officer services in the cities of Ventura, Los Angeles, San Bernardino, Mira Loma, Santa Ana, Lompoc, San Francisco, San Jose, Bakersfield, Stockton, Fresno, and Bakersfield, in California, and Phoenix and Tuscan, in Arizona. The RFQ included the following instructions:

All services performed under this request for quote must be provided by a vendor or vendors who possess a current GSA contract. Any quotation received that proposes services be provided in an "open market" arena will be deemed unresponsive; thus, ineligible for award. All quotes shall include the contractors and subcontractors Name(s), GSA Schedule Number, TIN, DUNS, CAGE code and a brief description of the services to be performed [and] . . .

The price quotation for each Sub-CLIN shall be in accordance with the labor categories and rates contained in the GSA Schedule 84--SIN 246-54. The Government fully expects the Contractor to quote discounted rates.

RFQ, Attachment B, at 1, 3. The RFQ also contained a late quotations clause stating that "[q]uotes received after the due date and time will not be considered."¹ RFQ, Attachment B, at 3.

The agency received five timely quotations in response to the RFQ, including a quotation submitted by Spectrum. On February 23, the agency contracting specialist contacted Spectrum and requested that Spectrum "provide proof of Detention Officers pricelist on GSA contract for the following areas, by COB today: Lompoc, CA, Bakersfield, CA, Fresno, CA, Stockton, CA." Protest at 2. Spectrum responded that Lompoc, CA, was on its GSA pricelist. The next day, the agency notified Spectrum that its quotation had been excluded from consideration because Spectrum's GSA FSS contract did not include pricing for several of the 14 locations required under the RFQ. It is undisputed that Spectrum's GSA FSS contract did not include published pricelist rates for detention officer services in the cities of Bakersfield, Fresno, and Stockton, by the closing time of the RFQ.

In its protest, Spectrum argues that the RFQ did not clearly require detention officer services in all service locations set forth in the RFQ to be on a vendor's FSS pricelist prior to the closing time of the RFQ, and that Spectrum should have been allowed to add the service locations and pricing at any time prior to award, or

¹ Generally, late quotations may be considered up to the time of issuance of the order, because an RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. Rather, the government's purchase order represents an offer that the vendor may accept through performance or by a formal acceptance document. M. Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 3. However, an RFQ may contain a late quotations clause to expressly limit the agency's consideration of late quotations. Id.

contract performance. Spectrum also argues that based on the pricing formula in its FSS contract, the agency could have discerned Spectrum's pricing for Bakersfield, Fresno, and Stockton.² We disagree.

As a general matter, FSS procedures provide agencies a simplified process for obtaining commonly used commercial supplies and services, FAR § 8.401(a), and, although streamlined, satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3) (2006); FAR § 6.102(d)(3). However, non-FSS products and services may not be purchased using FSS procedures; their purchase requires compliance with otherwise applicable procurement laws and regulations, including those requiring the use of full competitive procedures. Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 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. Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2 n.1 Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 4; CourtSmart Digital Systems, Inc., B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 5; see ATA Def. Indus. v. United States, 38 Fed. Cl. 489 (1997).³

Here, as noted above, the RFQ required that the vendor's price quotation for each city (sub-CLIN) be in accordance with the labor categories and rates contained in GSA Schedule 84, SIN 246-54. The RFQ also cautioned that "[a]ll services performed under this request for quote must be provided by a vendor or vendors who possess a current GSA contract, and the RFQ contained a late quotations clause, expressly requiring that quotations be submitted, and final, by the closing time of the RFQ. Additionally, we note that GSA Schedule 84, SIN 246-54, provides the following information for adding locations, and incorporating new pricing data under a vendor's FSS contract:

² Spectrum also protested that the agency's actions violated FAR § 8.405-1(c) and (d) because the agency eliminated all but one vendor from consideration. However, FAR § 8.405-3, not FAR § 8.405-1, sets forth the procedures for the establishment of blanket purchase agreements. Further, we have reviewed the relevant provisions of FAR § 8.405-3 and see nothing in the regulation that prohibits the agency from making an award in this context.

³ The sole exception to this requirement is for items that do not exceed the micro-purchase threshold of \$3,000. See CourtSmart Digital Systems, Inc., supra, at 5. The items in issue here exceed the threshold amount.

Information on Receiving Task Orders for new locations under SIN 246-54

The labor rates established in any contract for SIN 246-54 resulting from any offer against this Solicitation [are] subject to the limitations of scope for the applicable locations and Department of Labor wage determinations awarded under the contract. For any Vendor to properly quote and receive Task Orders that are within scope of their contract, the GSA Schedule contract must incorporate appropriate Wage Determinations and/or Collective Bargaining Agreements in effect at the facilities covered by the Task Ordering Agency's Request for Quotations by the closing date of the RFQ.

Agency Report (AR), Tab 6, at 5.

Notwithstanding the above provisions, Spectrum quoted rates for service locations that were not on its FSS contract at the time it submitted its quotation. Spectrum, therefore, did not quote rates "in accordance with" its FSS contract. Further, as noted above, information provided in connection with Spectrum's Schedule 84, SIN 246-54, FSS contract specifically advised that it "must incorporate appropriate Wage Determinations and/or Collective Bargaining Agreements in effect at the facilities covered by the Task Ordering Agency's Request for Quotations *by the closing date of the RFQ*" -- and Spectrum's FSS contract did not. AR, Tab 6, at 5 (emphasis added). In our view, the agency reasonably excluded Spectrum's quotation from further consideration upon recognizing that Spectrum had quoted items and rates not found on its FSS schedule.

Spectrum cites Perot Sys. Gov't Servs., Inc., B-402138, Jan. 21, 2010, 2010 CPD ¶ 64, and Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223, in support of its argument that the required services and pricing should not have been required until the time of the award. However, we conclude that as applied to the facts of this protest, the Perot and Alluviam decisions support the agency's decision to exclude Spectrum's quotation.

In Perot, the agency excluded the protester's quotation from consideration when it discovered that the protester had not quoted rates from its current FSS contract, but had instead quoted rates from a proposed future FSS contract under negotiation with the GSA.⁴ Based on those facts, our Office concluded that the agency's actions were reasonable because the protester's quoted rates had not been published or determined to be fair and reasonable by GSA under FAR §§ 8.402(b) and 8.404(d), and the quotation was therefore inconsistent with the terms of the

⁴ We note that GSA was also the procuring agency in Perot.

RFQ and the FSS. As in Perot, in this case, Spectrum's quotation included rates that were not set forth in its FSS contract--and had not been or determined to be fair and reasonable by GSA--at the time the agency excluded its quotation from consideration.

In Alluviam, the agency excluded the protester's quotation from consideration upon discovering that the protester did not have a current FSS contract including all items set forth in the quotation, but was only in the process of negotiating an initial FSS contract that included the quoted items at the closing time of the RFQ. In that protest our Office determined that the exclusion of the quotation was reasonable, where, as here, the RFQ conveyed the agency's intent that vendors have an FSS contract, with all required items on the vendor's FSS contract, prior to submission of a quotation.

In sum, where the protester submitted a quotation including items and rates that were not on the protester's FSS schedule at that time, the agency reasonably excluded the protester's quotation from further consideration upon its recognition of that fact.

We deny the protest.

Lynn H. Gibson
General Counsel