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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Symplicity Corporation

File: B-291902

Date: April 29, 2003

Ariel M. Friedler for the protester.

Richard P. Rector, Esq., and David E. Fletcher, Esq., Piper Rudnick, for TMP Worldwide, Inc., the intervenor.

Sandra Scholar, Esq., and Mark A. Robbins, Esq., Office of Personnel Management, and Kacie A. Haberly, Esq., General Services Administration, for the agencies.

Sharon L. Larkin, Esq., John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency's award of a task order to a firm pursuant to the firm's Federal Supply Schedule (FSS) contract is improper where the agency failed to consider whether the services offered by the firm are covered by its FSS contract, and the record establishes that the firm's quotation was based on providing personnel under labor categories not contained in its FSS contract.

2. Agency's evaluation of quotations submitted in response to a competitive procurement under the Federal Supply Schedule program was unreasonable, where the record reflects that the protester included its price for the performance of a particular task in its quotation while the awardee's quotation used a pricing structure for that task that did not provide a basis for a fair comparison of vendors' prices.

DECISION

Symplicity Corporation protests the award of a task order to TMP Worldwide, Inc. (d/b/a Monster Government Solutions) under TMP's Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. SOLO30000003, issued by the

Office of Personnel Management (OPM), for on-line federal employment information services.¹

We sustain the protest because OPM did not adequately consider whether the services TMP identified in its quotation were covered by its FSS contract, and because OPM did not reasonably evaluate quotations with regard to the vendors' proposed prices for system integration.

OPM currently operates and maintains USAJOBS, which is an automated federal employment information system providing notice of job opportunities in the federal government. The USAJOBS website "is accessed by over 10,000,000 unique visitors each year," and has available "[a]pproximately 16,000 to 18,000 vacancy announcements . . . each day." RFQ at 6. The RFQ sought "significant enhancements" to the federal government's employment information system to deliver "the best of the next generation of on-line Federal employment information services." For example, while under the current system "a job seeker who wishes to apply for 10 different jobs might be required to print a resume 10 times and send it to 10 separate addresses, even if all 10 jobs are in the same agency," the RFQ anticipates that job seekers will be able to "[c]reate their resumes in a common format, and send them to as many job openings as they wish via the [new] Recruitment One-Stop/USAJOBS website." RFQ at 5-6.

The RFQ contained task descriptions for web-based services, telephone-based services, as well as other services, and listed nine "major" performance requirements as well as certain technical requirements. RFQ at 8-17, 24. For example, the solicitation provided that the "overall site design must continue to promote the idea of the Federal Government as a corporate brand, and convey to job seekers the diversity of Federal career opportunities and the values, rewards, and benefits of public service," and specified that the website and telephone systems be accessible 24 hours per day, 365 days per year. RFQ at 8, 13. Additionally, the solicitation included an appendix listing various functional requirements, but noted that these functional requirements were "generally described in terms of desired results, leaving open the approach by which the objective will be achieved." RFQ at 12-13, app. B.

The RFQ provided for the award of a 1-year fixed-price task order, with four 1-year options, and stated that award would be made to the vendor whose quotation was determined "most advantageous to the Government considering primarily the contractor's demonstrated technical excellence." The solicitation set forth the following technical evaluation factors in descending order of importance: soundness

¹ Because a protective order was not issued in connection with this case, the language in our decision, which is based in part upon source selection sensitive and confidential information, is necessarily general.

of proposed technical approach, management capabilities, past performance, and value of enhancements. The solicitation added that the “[t]echnical evaluation factors, when combined, are significantly more important than cost or price.” RFQ at 26, 27.

In response to the RFQ, vendors were to submit a “Technical Proposal” as well as a “Pricing Proposal.” RFQ at 20. The RFQ specified that each vendor’s “Technical Proposal” was to address the vendor’s approach and methodology for accomplishing the work required, as well as the vendor’s approach to meeting the nine “major” performance requirements set forth in the solicitation. RFQ at 23-24. The technical proposal section of each vendor’s quotation was also to include the roles and resumes of the proposed key personnel, as well as past performance references. With regard to past performance, vendors were to submit information on past contracts “similar to those required by this contract,” and were informed that past performance was going to be used to “[a]ssess how well the contractor has performed in the past,” and to “[d]etermine how relevant the work performed is to the requirement in this solicitation.” RFQ at 25, 27. Finally, the solicitation provided that the vendors determined “to be best qualified” by OPM after the “initial evaluation of proposals” may be “requested to make an Oral Presentation.” The RFQ provided that the oral presentation would consist of a “30-minute presentation,” followed by a question and answer period not to exceed two hours. RFQ at 21.

The RFQ was sent to nine different FSS vendors, including Symplicity and TMP, that hold contracts under different GSA schedules under which OPM had previously determined award could be made.² For example, Symplicity holds a contract under GSA Schedule 70 (Information Technology Services), and TMP holds a contract under GSA Schedule 738I (Marketing, Media and Public Information Services).

Five vendors, including Symplicity and TMP, submitted quotations. OPM evaluated the vendors’ quotations, provided each vendor with “a set of questions regarding their technical proposals,” and conducted oral presentations with each of the five vendors. Agency Report (AR) at 3, 6. The agency included the quotations of three vendors, including Symplicity and TMP, in the competitive range, provided the competitive range vendors with written discussion questions, and conducted oral discussions. AR at 6. OPM requested, received, and evaluated final revised quotations, and selected TMP’s higher-priced, higher-rated quotation for award of the task order, valued at several million dollars. This protest followed.

Symplicity argues that the services sought under the RFQ cannot be purchased from TMP under its Schedule 738I contract because the services are outside the scope of the contract. Specifically, Symplicity contends that TMP’s Schedule 738I contract

² Collectively, these vendors hold FSS contracts under four different schedules.

does not contain the appropriate labor categories, and that labor may have been improperly included as “other direct costs” (ODC) under this task order.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) § 8.401(a). The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3); FAR § 6.102(d)(3); Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 3-4. Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-5.

As noted above, TMP holds a contract with GSA under Schedule 738I, Marketing, Media and Public Information Services. The task order here was issued under TMP’s Schedule 738I contract, special item number (SIN) SIN-8, Full Service Marketing, Media, and Public Information Service. AR at 8; Tab 8, Award of Task Order to TMP. Under SIN-8, vendors “provide a broad range of services required by Federal Government agencies for short and long term integrated marketing campaigns.” GSA Schedule 738I, SIN-8. As the title and general description of SIN-8 suggest, it is a “catch all” SIN, under which vendors can perform work covered by two or more of the other 11 SINs set forth in Schedule 738I.³ Id.; Hearing Transcript (Tr.) at 15, 61.

TMP’s contract under Schedule 738I, SIN-8 sets forth 19 labor categories, such as “Account Supervisor” and “Programmer,” as well as a general description of TMP’s ODCs that support the services provided under SIN-8. AR, Tab 4B, TMP’s Final Quotation. These ODCs include such things as research materials, telemarketing call centers, advertising media, printing and photocopying.⁴ Id.; TMP’s Pricing Schedule, available at <<http://www.gsaadvantage.gov>>.

³ Schedule 738I is comprised of the following 12 SINS: SIN 1-Market Research, Media Analysis and Related Services; SIN 2-Web Site Design and Maintenance Services; SIN 3-Trade Shows/Exhibits and Conference and Events Planning Services; SIN 4-Press and Public Relations Services; SIN 5-Public Education and Outdoor Marketing and Media Service; SIN 6-Radio, Television, and Public Service Announcements Services; SIN 7-Introduction of New Products or Services; SIN 8-Full Service Marketing, Media, and Public Information Service; SIN 9-Direct Mail Services; SIN 10-Commercial Photography Services; SIN 11-Commercial Art and Graphic Design Services; and SIN 12-Videotape and Film Production Services. GSA Schedule 738I.

⁴ A full description of TMP’s ODCs, as defined in its contract, is as follows: “Research Materials, Release, Focus Group, Survey, Polling, Testing, Telemarketing Call Center, Advertising Media (print, voice, web/Monster, outdoor, etc.), Mail Lists, (continued...) ”

The record establishes, and neither OPM, GSA, nor TMP argues otherwise, that TMP's quotation here included two labor categories that are not on its Schedule 738I contract, and that OPM recognized but failed to realize the importance of this during its evaluation of TMP's quotation. AR, Tab 4B, TMP's Final Quotation, at 1; OPM's Post-Hearing Comments at 8-11; GSA's Post-Hearing Comments at 7; TMP's Post-Hearing Comments at 10-11; Tr. at 72, 101, 105, 136. The acceptance of TMP's quotation and award of a task order to that firm by OPM was thus improper because, as noted above, an agency cannot lawfully use the FSS ordering procedures to order services that are not contained on the vendor's schedule contract. OMNIPLEX World Servs. Corp., supra, at 5-6; The CDM Group, Inc.; B-291304.2, Dec. 23, 2002, 2002 CPD ¶ 221 at 3-4. That is, as confirmed by GSA, labor categories included in a vendor's quotation must be listed on the vendor's schedule contract before a task order is issued. GSA's Post-Hearing Comments at 2, 7; Tr. at 31-32, 80; The CDM Group, Inc., supra. We sustain the protest on this basis.⁵

This problem is symptomatic of OPM's approach to this procurement. In this regard, the record reflects that OPM never performed an analysis of whether the quoted services, labor categories, or ODCs included in TMP's quotation were within the scope of TMP's Schedule 738I contract. Tr. at 101-03, 105, 108, 125-26, 189. In fact, OPM has represented that it "could not come to any specific conclusion one way or the other" as to whether TMP proposed services as ODCs in a manner that was consistent with its Schedule 738I contract.⁶ Tr. at 231.

(...continued)

Color Laser Prints and Scans, Scans, Photography, Image and Music Rights, Film and Veloxes, Storage Media, Printing & Photocopying, Miscellaneous Production Expenses, Trade Show Exhibits, Conference, Exhibits, Postage and Mailing Services, Messengers/Express Mail, and Telephone Charges."

⁵ OPM contends that Symplicity was not prejudiced, since TMP could have taken steps that would have corrected the labor category deficiency had discussions occurred. Although the agency may be correct that TMP could have corrected this deficiency in its quotation had it been raised during discussions, the fact is it did not do so. The agency's position here does not, in our view, address the fundamental flaw that OPM awarded a task order under a FSS contract to a vendor who did not have all the required services in its contract and whose quotation was therefore unacceptable, which prejudiced vendors who submitted quotations based on their FSS contracts. See T-L-C Sys., B-285687.2, Sept. 29, 2000, 2000 CPD ¶ 166 at 4.

⁶ Symplicity appears to challenge the use here of Schedule 738I, arguing that the RFQ requires services inappropriate for purchase under that schedule. We think this argument is irrelevant to the pertinent inquiry, which is whether the particular terms of TMP's Schedule 738I contract included all services ordered here. As stated above, OPM failed to conduct a meaningful analysis of this issue.

Symplcity also protests that OPM's evaluation of its quotation was unreasonable and inconsistent with the RFQ's evaluation factors. Under the FSS program, agencies are not required to conduct a competition before selecting a vendor that represents the best value and meets the agency's needs at the lowest overall cost. FAR § 8.404(a); Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4. However, where, as here, an agency handles the selection of a vendor for an FSS order like a competition in a negotiated procurement, and a protest is filed challenging the outcome of the competition, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. Computer Prods., supra, at 4-5.

Specifically, Symplcity argues that OPM erred in evaluating systems integration costs. With regard to systems integration, the RFQ (at 25) provided as follows:

The firm, fixed prices proposed must include all costs associated with performing the services. OPM will also establish a Blanket Purchase Agreement (BPA) under the underlying GSA Federal Supply Schedule to order services necessary to integrate other Federal agency employment systems and the Recruitment One-Stop system.

The agency subsequently provided the competitive range vendors with an e-mail that listed "Assumptions for Integration" (such as the statement that "[t]here are 76 Cabinet level Departments and Independent Agencies in the Executive Branch"), and requested that each vendor "explain [its] proposed approach for accomplishing this task, whether or not you have included the estimated costs for accomplishing this task in your proposed fixed price, and if not, what your estimated cost would be for performing this activity and what the underlying assumptions you have made in arriving at this estimate." AR, Tabs 5A(4), 5B(4), 5C(4), E-mails to Vendors (Dec. 6, 2002).

Symplcity included its price for systems integration in its final fixed-price quotation, whereas TMP's quotation, as considered by the agency, did not. AR, Tab 4A, Symplcity's Final Quotation, Updated Pricing Summary, at 1; Tab 4B, TMP's Final Quotation, at R 19-22. Symplcity contends in this regard that it was misled during discussions with OPM into ignoring the above-quoted RFQ provision providing that integration costs were to be purchased through a separate blanket purchase agreement, and instead understood that it was required to provide in its final quotation its price for systems integration. Tr. at 246.

We need not decide whether the protester was misled regarding the pricing of systems integration during its discussions with OPM because we find that OPM's evaluation of systems integration costs was flawed. The record reflects that OPM recognized that Symplcity's price for systems integration was included in its fixed-

price quotation.⁷ AR, Tab 6, Procurement Summary Report, at 10; Tr. at 272, 286. The record also reflects that the agency recognized that TMP's final quotation did not fully include its price for systems integration. AR, Tab 6, Procurement Summary Report, at 11; Tr. at 263.

In our view, the agency, at a minimum, was required to evaluate offerors on an equal basis and in a manner such that the total cost to the government for the required services could be meaningfully assessed.⁸ See Lockheed Aeronautical Sys. Co., B-252235.2, Aug. 4, 1993, 93-2 CPD ¶ 80 at 7 ("apples and oranges" cost evaluation "inherently improper"); Dillon Supply Co.; Dept. of Energy-Recon., B-203937, Jan. 19, 1982, 82-1 CPD ¶ 41 at 3-4 (protest sustained where costs were excluded from some vendors' quotations and not others). OPM's evaluation approach here created a situation where OPM was in effect comparing "apples and oranges," in that it permitted vendors to choose whether or not to include in their quotations a price for systems integration, which did not provide a basis for the total cost of each vendor's approach to be meaningfully compared.⁹ Accordingly, we sustain the protest on this basis as well.

Symplicity also argues that OPM applied unstated evaluation criteria in its evaluation of quotations in evaluating technical approach and past performance, in that it considered the vendors' approaches to marketing or promoting the contemplated Recruitment One-Stop/USAJOBS website and the federal government as an employer, and the sizes of the vendors' past contracts.

Vendors must be advised of the bases upon which their quotations will be evaluated. This means that an agency may not consider evaluation criteria that are not reasonably related to the evaluation factors set forth in the RFQ. KPMG Consulting LLP, B-290716; B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 14. As explained below, we find that the agency's consideration of the vendors' approaches to marketing and size of their past contracts did not constitute the use of unstated evaluation criteria since these considerations were reasonably related to the evaluation factors set forth in the RFQ.

⁷ OPM concedes that Symplicity's price for these services included in its quotation is readily calculable.

⁸ The agency may want to clarify for vendors its needs regarding systems integration services as part of its corrective action, in order to provide for a fair and equitable competition. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 5; Haworth, Inc.; Knoll N. Am., Inc., B-256702.2, B-256702.3, Sept. 9, 1994, 94-2 CPD ¶ 98 at 5-6.

⁹ It does not appear that the vendors' costs for systems integration would necessarily be comparable.

Specifically, the RFQ stated that under the soundness of proposed technical approach evaluation factor the agency would “be looking for how well the [quotation] shows an understanding of the[] tasks” identified in section A.3 of the solicitation. RFQ at 27. Section A.3 provided, in turn, that “[t]he page and overall site design must continue to promote the idea of the Federal Government as a corporate brand, and convey to job seekers the diversity of Federal career opportunities and the values, rewards, and benefits of public service.” This section of the RFQ continued by stating that “[t]he text and graphics on the page must communicate the ‘one-stop’ concept.” RFQ at 8.

In evaluating quotations, the record reflects that OPM considered how the vendors’ competing technical approaches promoted the idea of federal government employment. As illustrated above, this was reasonably related to the RFQ’s soundness of technical approach evaluation factor, in that it involved the consideration of how well the quotations “promote[d] the idea of the Federal Government as a corporate brand, and convey[ed] to job seekers the diversity of Federal career opportunities and the values, rewards, and benefits of public service.” See RFQ at 8, 27.

With regard to the past performance evaluation factor, the RFQ requested that vendors provide “evidence of their ability to successfully perform the work described in this solicitation.” RFQ at 25. Consistent with this, the solicitation specified that the information provided would be used to “[d]etermine how relevant the work performed is to the requirement in this solicitation,” and that the evaluation would “focus on how well the [quotation] documents and provides the requested information concerning successful performance on previous projects that are related to the Recruitment One-Stop.” RFQ at 25, 27.

Contrary to Symplicity’s assertions, the agency’s consideration of contract size in its evaluation of the vendors’ past performance is unobjectionable, given that it is reasonably related to the “relevan[ce]” of past contracts as well as the successful performance of previous contracts that are related to this effort, both of which are considerations under past performance factor. Indeed, our Office has stated that it would be both illogical and unreasonable to presume that that an agency will pay no attention to the size and similarity of past contracts in its evaluation of past performance, since such factors are germane to the relevance of the past performance information. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 6. Accordingly, this aspect of Symplicity’s protest is denied.¹⁰

¹⁰ Symplicity also argues that OPM failed to apply the Buy American Act surcharge to TMP’s quotation, based upon Symplicity’s speculation that TMP utilizes the services of a foreign company. The record provides no support for Symplicity’s assertion here.

The protest is sustained. We recommend that OPM evaluate vendors' quotations to determine whether the proposed services (including labor categories and ODCs) are within the scope of their respective schedule contracts. We further recommend that OPM reopen discussions with all vendors whose quotations are in the competitive range,¹¹ and request and reevaluate revised quotations.¹² OPM may also want to amend its RFQ to further clarify its systems integration needs. We also recommend that the protester be reimbursed its costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (2003). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

This protest is sustained.

Anthony H. Gamboa
General Counsel

¹¹ Had OPM properly evaluated TMP's quotation, the apparent deficiency with regard to labor categories should have been raised with TMP during discussions. However, as indicated, TMP was not informed during discussions that its quotation was deficient in that it included labor categories that were not listed on TMP's GSA Schedule 738I contract.

¹² In view of this recommendation, we need not address Symplicity's protest that the agency's evaluation of quotations and conduct of discussions under the management capability and past performance factors, and its best value analysis, were unreasonable and improper.