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Decision

Matter of: CW Government Travel, Inc.

File: B-295530

Date: March 7, 2005

Lars E. Anderson, Esq., Benjamin A. Winter, Esq., and Julia M. Kiraly, Esq., Venable LLP, for the protester.

Raymond M. Saunders, Esq., Maj. Anissa N. Parekh, Department of the Army, for the agency.

Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging a solicitation's guaranteed minimum amount for an indefinite-delivery, indefinite-quantity contract is denied where the record shows that the minimum is more than nominal.

DECISION

CW Government Travel, Inc. (CWGTI) protests the adequacy of the guaranteed minimum amount for request for proposals (RFP) No. W91QUZ-04-R-0014, issued by the Department of the Army for commercial travel office services under the developmental, automated Defense Travel System (DTS) program.

We deny the protest.

The RFP anticipates multiple awards of indefinite-delivery, indefinite-quantity (ID/IQ) contracts for Department of Defense (DOD) wide travel agent services. The base ordering period is 2 years, with three 1-year option ordering periods. Subsequent task orders will be competed among the contract awardees. The DTS services are intended to replace "traditional" travel services, which require direct communication between government travel customers and travel agents, with an automated, paperless system. However, because of ongoing transition efforts, the contractors will be required to provide traditional, as well as DTS, services.

The RFP seeks to consolidate and standardize travel services within DOD under a single procuring activity. Task orders will be issued for various worldwide regions,

and the task order amounts will consist of transaction fees to be paid to the contractors. Individual DOD activities will place travel orders with the contractors which have received task orders; the contractor will process the travel transaction using the ordering activity's funds, and will receive a fee for each transaction processed.

CWGTI argues that the guaranteed minimum amount set forth in the RFP to be ordered from each contractor is no more than nominal, and is insufficient consideration to form a binding contract. In this respect, the RFP specified that the guaranteed minimum amount for the ID/IQ contract would be \$2,500, and that the minimum and maximum orders allowed under the contract would be \$15,000,000 and \$150,000,000, respectively. RFP amend. 2, at 30; RFP amend. 1, at 20. The agency established the \$2,500 minimum based on its review of minimums in existing General Services Administration (GSA) Federal Supply Schedule (FSS) travel contracts, and also "considered the dollar amounts for travel transaction fees under other travel-related contracts in determining the mandatory minimum here." Memorandum of Law at 3-4, 6; Contracting Officer's Statement at 4. Contractors which receive task orders here will receive payment--a transaction fee--for each travel transaction the contractor processes.

An agency may use an ID/IQ contract where it cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period and where it is inadvisable for the government to commit itself for more than a minimum quantity. Federal Acquisition Regulation (FAR) § 16.504(b); Aalco Forwarding, Inc., et al., B-277241, B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 6. Because an ID/IQ contract does not specify the precise work that will be provided and is not a requirements contract, a specific guaranteed amount or quantity is required as consideration to bind the parties. Aalco Forwarding, Inc., supra. To ensure that a contract is binding, the minimum quantity must be more than a nominal amount, but should not exceed the amount the agency is fairly certain to order. FAR § 16.504(a). There is no "magic number" that the FAR or our decisions set as adequate consideration for a contract; instead, the determination of whether a stated minimum quantity is "nominal" must consider the nature of the acquisition as a whole. Carr's Wild Horse Ctr., B-285833, Oct. 3, 2000, 2000 CPD ¶ 210 at 3; ABF Freight Sys., Inc., et al., B-291185, Nov. 8, 2002, 2002 CPD ¶ 201 at 4; Sea-Land Serv., Inc., B-278404, et al., Feb. 9, 1998, 98-1 CPD ¶ 47 at 12.

CWGTI argues that the \$2,500 guaranteed minimum amount here is unreasonable because it is so far out of line with the \$15,000,000 minimum order amount. CWGTI, however, cites no authority for the proposition that a contract's minimum order amount has to have a specific relationship to the required minimum guarantee, or

that a minimum order amount forms the floor for a minimum guarantee.¹ In light of the purpose of FAR § 16.504(a) to establish a binding minimum—in effect, consideration for the ID/IQ contract—we do not believe that a contract’s minimum order establishes the minimum guarantee or serves as a firm target against which the reasonableness of the minimum guarantee must be evaluated. Instead, the minimum guarantee must be evaluated in the context of all of the specific facts and circumstances of the procurement. ABF Freight Sys., Inc., supra.

Our Office requested that the agency and CWGTI provide, for comparison purposes, data regarding average or representative fees for similar travel transactions based on the agency’s current contracts and the protester’s work as an incumbent on other travel contracts.² The agency provided the data from an existing travel contract which “represents the agency’s best estimate of the likely costs for transactions under the proposed contract because it is the only contract known to the agency to have a similar pricing scheme.” Agency Response to Questions at 2.³ This contract has transaction fees ranging from \$5 to \$16 and, thus, the agency contends that the \$2,500 guaranteed minimum here could represent up to several hundred transactions. We consider the transaction fees here to be comparable to the actual transactions that formed the basis for the minimum guarantees in our decisions in Aalco Forwarding, Inc., Sea-Land Services, Inc., and ABF Freight Systems, Inc. Because the guaranteed minimum amount here potentially represents several hundred potential transactions (for example, at \$5 per transaction, the \$2,500 guaranteed minimum amount would represent 500 transactions), we cannot

¹ In fact, CWGTI does not argue that the minimum guarantee must be equal to the \$15,000,000 minimum order amount; instead CWGTI suggests that a \$6,000,000 minimum guarantee for each offeror awarded a contract under the solicitation is appropriate, based on the agency’s estimate of the likely number of transactions per year. Comments at 14-15.

² CWGTI declined to provide this information, arguing that our request for information was not relevant to the determination of the reasonableness of the minimum guarantee here. Protester’s Response to Questions at 1.

³ The agency notes that the GSA FSS Travel Services Solution contract also has a minimum guarantee of \$2,500 for similar travel-related work and similar transaction fee-based contract structure. CWGTI acknowledges that it competed for, and has received, a contract under this GSA schedule, but argues that the amount of work for each transaction is greater for this DOD contract due to increased reporting requirements. Although we recognize that each minimum guarantee must be established based on the particular circumstances of the procurement, we do not believe that the GSA schedule contract is so different that it renders that contract irrelevant for purposes of our review of the reasonableness of the guaranteed minimum amount here.

conclude that this guaranteed minimum amount is so small as to be nominal, and thus insufficient consideration to bind the parties.⁴

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ To the extent CWGTI argues that the minimum guarantee is unreasonable because \$2,500 is inadequate consideration to maintain readiness to perform the work required to fill a \$15,000,000 minimum order, we note that there is no legal requirement that a guaranteed minimum reimburse a contractor for its start-up or performance costs. TRS Research, B-290644, Sept. 13, 2002, 2002 CPD ¶ 159 at n.9.