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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Computers Universal, Inc.

File: B-296536

Date: August 18, 2005

Peter L. Cannon for the protester.

Michael R. Rizzo, Esq., McKenna, Long and Aldridge, LLP, for abcISP, Inc., an intervenor.

Dennis Foley, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's extension of a sole-source purchase order issued under the awardee's General Services Administration Federal Supply Schedule contracts is improper, is denied, where the agency established a reasonable basis for the limited extension until the protester's currently pending protest with our Office of the competitive procurement is resolved and award is made.

DECISION

Computers Universal, Inc. (CUI) protests the Department of Veterans Affairs' (VA) extension of a sole-source purchase order issued to abcISP, Inc. under that firm's General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, for information technology services for the Naval Medical Center in San Diego, California.

We deny the protest.

On October 6, 2004, CUI was awarded a contract for these services under a competitive procurement. Because of a protest by abcISP, on October 7, a stop work order was issued under that awarded contract. While that protest was being resolved, VA commenced issuing a series of sole-source "emergency" purchase orders and extensions thereto under abcISP's GSA contracts to satisfy its interim requirements for these services until this, and several following protests, were resolved. In part because of the issues raised by abcISP's protest, CUI's contract

was terminated for convenience on February 23, 2005 because the Navy was not satisfied that CUI would provide qualified programmers. A new solicitation for these services was issued on February 28, which was protested by CUI (B-296003) and later canceled by the agency due to administrative errors.

On May 2, the agency issued solicitation No. RFQ 600-134-05 for these services. On May 25, CUI protested the terms of this solicitation before the proposal due date (B-296501), essentially contending that they exceeded the agency's needs and provided abcISP with an unfair competitive advantage.¹ Specifically, CUI argues in its protest that abcISP worked with the agency to prepare the solicitation, in particular the evaluation criteria, so that the requirements could only be met by abcISP's employees. By this time, purchase order modifications had extended abcISP's performance for these services under its FSS contract to April 25, and then to May 31. Due to CUI's protest, a contract for these services cannot be awarded under the competitive solicitation, and a modification to the purchase order further extending abcISP's performance for a period of 30 days was issued under abcISP's FSS contract; subsequent 30-day extensions are contemplated while the protest is being resolved and award made under the protested competitive solicitation.

On June 21, the agency prepared a justification for other than full and open competition supporting the sole-source award to abcISP. In the justification, the agency stated that the emergency task orders have been issued to continue critical information technology support for the Navy Medical Center in San Diego due to the continuing solicitation protests, and that to change service providers for each emergency task order would lead to loss of productivity, increased training costs, and a probable failure of a computer program which assists hundreds of physicians with their clinical tasks on a daily basis. The justification indicated that abcISP had been performing these services for the past 5 years as either a subcontractor or contractor and "no alternate sources could be identified that can provide this specific critical service on an emergency interim basis." Agency Report, Tab 13, Justification for Other than Full and Open Competition.

On June 6, CUI protested the latest extension of abcISP's purchase order from June 1 through June 30.² In its protest CUI does not dispute that these services are critical

¹ This protest is being resolved in a separate decision.

² CUI did not protest the initial noncompetitive purchase order for these services or the prior noncompetitive extensions of this purchase order. Indeed, any such protests would have been untimely because CUI had previously been made aware that abcISP had been performing these services in the interim because of the prior protests. CUI is timely to protest the most recent modification to abcISP's purchase order because CUI filed its protest within 10 days of the latest modification by the agency of abcISP's contract extending performance from June 1 through June 30, 2005.

or argue that these interim requirements do not need to be provided while CUI's latest protest is resolved and award is made under the protested competitive solicitation. Instead, CUI's protest references the prior sole-source extensions of abcISP's FSS purchase order, which it did not protest; the events surrounding its award of a contract in October 2004, which was eventually terminated for convenience on February 23, 2005, because the agency found that CUI had not demonstrated it could provide qualified personnel; and its current protest (B-296501) of the competitive solicitation, in which it argues that abcISP has been afforded an unfair competitive advantage, to show that the agency is allegedly biased in favor of abcISP, and contends, without further elaboration, that abcISP is not the only source capable of providing these interim services.

While the requirements of the Competition in Contracting Act (CICA), 10 U.S.C. § 2304(c)(1) (2000), which limits obtaining goods or services noncompetitively unless supported by a written justification, does not apply to orders placed against FSS contracts, Commercial Drapery Contractors, Inc., B-271222 et al., June 27, 1996, 96-1 CPD ¶ 290 at 3 n.1, Federal Acquisition Regulation (FAR) § 8.405-6 provides that sole-source orders from FSS contracts be supported by sole-source justifications that contain much of the same information required to be contained in justifications for sole-source contracts subject to CICA.

Based on the record here, in particular the very limited duration of the contract extension, we think the agency has established a reasonable basis for this latest noncompetitive extension of abcISP's purchase order under its FSS contract until CUI's currently pending protest of the competitive procurement is resolved and award made under the protested solicitation. CUI has not shown that it is practicable for the agency to obtain a different contractor for these bridge contract services for this limited period of time. Unlike the situation in VSE Corp.; Johnson Controls World Services, Inc., B-290452.3 et al., May 23, 2005, 2005 CPD ¶ 103 (cited by the protester), where the agency noncompetitively extended a contract that had been noncompetitively awarded 4 years earlier for another 18 months with no justification and approval for this action and the extension was result of a lack of advanced procurement planning, the protested extension here is of a purchase order under the FSS to which the CICA requirements (applied in the VSE case) do not apply, and, in any case, the extension was not the result of a lack of advanced procurement planning, but was caused by a series of protests, and the agency has supported this latest extension with an approved justification.

The protest is denied.

Anthony H. Gamboa
General Counsel