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Decision

Matter of: STG, Inc.

File: B-405082; B-405082.2

Date: July 27, 2011

Claude P. Goddard Jr., Esq., Daniel J. Donohue, Esq., and Sarah M. Graves, Esq., Husch Blackwell LLP, for the protester.
Fernand A. Lavallee, Esq., Seamus Curley, Esq., Dionis M. Gauvin, Esq., DLA Piper LLP (US), for Aquilent, Inc., an intervenor.
Frank V. DiNicola, Esq., Kim J. Sawicki, Esq., and Tiffany N. Alford, Esq., Department of Veterans Affairs, for the agency.
Linda C. Glass, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of 4-month sole-source task order for interim services placed against Federal Supply Schedule (FSS) contract is denied where the services were urgently required and agency reasonably concluded that following the applicable FSS competitive ordering procedures would result in unacceptable interruptions of service.

DECISION

STG, Inc., of Reston, Virginia, protests the Department of Veterans Affairs (VA) issuance of a 4-month task order to Aquilent, Inc., of Laurel, Maryland, for maintenance and support services for the VA's Electronic Contract Management System (eCMS).

We deny the protest.

The eCMS is an electronic data management system that houses all the VA's procurement and contracting data and provides the agency with reporting on procurement and contracting activities. Contracting Officer's Statement at 1. The eCMS is a nationwide system that electronically manages the creation, storage, and security of VA's procurement actions. Id.

This protest follows an earlier protest by STG, objecting to the issuance of a task order to Aquilent, the incumbent, for services to develop, support, and maintain

the eCMS under request for quotations (RFQ) No. VA118-11-RP-0004. On April 27, 2011, we dismissed that protest as academic after the agency notified us that it was terminating Aquilent's task order, reassessing the agency's requirements, and resoliciting the procurement. See STG, Inc., B-404926; B-404926.2, April 27, 2011. The next day, on April 28, the agency issued a 4-month task order to Aquilent to provide maintenance and support services for the eCMS while the agency was undertaking corrective action.

The protester argues that the agency improperly issued the short-term task order to Aquilent on a sole-source basis without allowing STG an opportunity to compete for the task order. Protest at 2.

The 4-month task order, which has a value of \$1,958,752, was placed against Aquilent's Federal Supply Schedule (FSS) contract. Federal Acquisition Regulation (FAR) § 8.405-6¹ exempts orders placed under the FSS from the competition requirements of FAR Part 6, but requires that an ordering activity "justify its action when restricting consideration of . . . schedule contractors to fewer than required in [FAR §§] 8.405-1 or 8.405-2."² FAR § 8.405-6(a)(1). Circumstances justifying such a restriction include where an urgent and compelling need exists and following the ordering procedures would result in unacceptable delays. FAR § 8.405-6(b)(3). Where an ordering activity restricts competition on the basis of an urgent and compelling need, the contracting officer is required to document the circumstances in writing. FAR § 8.405-6(c), (f). Where the proposed order is over \$550,000 but not over \$1.5 million, the justification must be approved by the competition advocate of the activity placing the order. FAR § 8.405-6 (h)(2).

Here, the agency determined that it was critical that maintenance and support services for the eCMS remain uninterrupted and seamless during the time period in which the agency reviews its requirements and resolicits the procurement. Agency Report (AR), Tab 4, Urgency Statement, at 2. In support of this determination, the agency explained that interrupted service would have a "deleterious effect on the health and well being of Veterans" who receive "vital" services from procurement activities impacted by eCMS. Id. The agency concluded that "the only reasonable and viable solution" to avoid an interruption in the services was to award a short-term task order, "which will be solely for maintaining, not updating eCMS," to

¹ This FAR provision has been revised with an effective date of May 16, 2011, and thus the revised FAR provision applies to solicitations issued on or after May 16. See FAR § 1.108(d)(1). As stated above, this task order was issued on April 28, which precedes the effective date of the revised FAR provision.

² For orders exceeding the micro-purchase threshold, such as the one here, consideration of at least three schedule contractors is required. FAR §§ 8.405-1(c), 8.405-2(c)(2)(ii).

the current incumbent, Aquilent, without competition, until a properly competed task order can be awarded. Id.

To this end, the agency executed a justification and approval (J&A) for a limited source award under the FSS on an urgent and compelling basis. The agency reiterated that uninterrupted eCMS maintenance and support was “critical to the [VA’s] mission,” and stated that the VA did not have the resources to provide these services “in-house” while conducting a competition that would likely take several months to complete. AR, Tab 7, J&A, at 2. The agency recognized that there were other sources available for this requirement, including STG, but the agency concluded that only Aquilent, the incumbent, possessed the specialized experience specific to eCMS and the VA’s needs necessary to continue to provide the critical maintenance and support without a break in service. Id. at 3. The agency stated that any new contractor would most likely need to hire and train new employees, as well as obtain the required security credentials. Id. The agency also estimated that it would take a new contractor at least 1 month to begin learning the processes and the organization, a minimum of 2 weeks to provide new employees with access to the VA network, and another 2 weeks to train the new employees on eCMS and the various subsystems.³ Id. Based on this record, we find the issuance of a task order to Aquilent to be unobjectionable.

The protester disputes the agency’s findings of “urgent and compelling” circumstances. Comments at 2. However, the protester has not shown that the agency’s determination is unreasonable. As noted above, the record supports the agency’s determination that conducting a competition for these interim services would result in interrupted services that are critical to the VA’s mission. Furthermore, the agency has shown that, as the incumbent, Aquilent is the only contractor capable of providing immediate maintenance and support services. As noted above, FAR § 8.405-6(b)(3) specifically authorizes restricting competition where, as here, an urgent and compelling need exists and following the FSS ordering procedures would result in unacceptable delays. To the extent the protester is disputing the agency’s judgment as to the time period required to conduct a competition for the interim services, a protester’s mere disagreement does

³ Furthermore, the agency pointed out that the previous solicitation, included a provision for a 60-day transition support period in which the awardee, if not the incumbent, was required to shadow the incumbent contractor, participate in technical briefing sessions with the incumbent contractor, and participate in required formal and on-the-job training in order to be able to take over the support services from the incumbent. Id.

not show that the agency's judgment was unreasonable.⁴ Richard Bowers & Co., B-400276, Sept. 12, 2008, 2008 CPD ¶ 171 at 2.

The protest is denied.

Lynn H. Gibson
General Counsel

⁴ STG also argues that the J&A represented to the competition advocate that the task order would be solely for maintaining and not updating the eCMS, and yet the task order includes development and upgrade work. For example, STG contends that Aquilent is developing both a Systems Requirement Specification (SRS) and a Software/System Design Specification (SDS) under the task order. Supplemental Protest at 3. However, the J&A expressly stated that “[t]he proposed action is to provide continued support services for the operation and maintenance of eCMS to include . . . technology upgrade support.” AR, Tab 7, J&A, at 1. The agency has shown that the SRS and SDS fall within the technology upgrade support contemplated by the J&A, and that it is not new development work.