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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Brooks Range Contract Services, Inc.

File: B-405327

Date: October 12, 2011

Johnathan M. Bailey, Esq., and Theodore M. Bailey, Esq., Bailey & Bailey, PC, for the protester.

Michael A. Gordon, Esq., Michael A. Gordon PLLC, for Urban Services Group, Inc. and Meridian Management Corporation, intervenors.

Leigh Ann Bunetta, Esq., General Services Administration, 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 that contracting agency improperly awarded a federal supply schedule (FSS) task order to an entity that did not have an FSS contract is denied where the vendors submitted a “contractor team arrangement” (CTA) with their proposal as required by the solicitation (and as permitted by the procedures of the General Services Administration), and where each of the vendors in the team held the FSS contract required by the solicitation.

DECISION

Brooks Range Contract Services, Inc. (BRCS), protests the award of a task order to Urban Services Group, Inc. and Meridian Management Corporation (Urban/Meridian) under request for proposals (RFP) No. GS-08P-11-JB-C-0028, issued by the General Services Administration (GSA) for building management services for the David Skaggs Research Center in Boulder, Colorado and the Fort Collins Federal Office Building in Fort Collins, Colorado. The protester argues that the agency improperly awarded to an entity that does not have a federal supply schedule (FSS) 03FAC schedule contract¹ as required by the RFQ.

¹ The 03FAC is a facilities, maintenance and management multiple award schedule that provides federal agencies a streamlined procurement device to acquire all of the services necessary to maintain and manage a facility. www.gsa.gov/schedules.

We deny the protest.

BACKGROUND

The RFP, issued on May 6, 2011, provided for the award of a fixed-price task order for a 1-year base period with nine 1-year option periods. RFP and Amend. 1. Vendors were informed that the competition was limited to selected FSS 03FAC schedule contract holders. Award was to be made on a best value basis, with evaluation factors of technical capabilities, past performance and price. RFP at v.

As is relevant here, a schedule contractor team arrangement (CTA) is a written agreement between two or more schedule contractors to work together to meet agency requirements. Agency Report (AR), Tab 9, GSA CTA Website. The CTA document details the responsibilities of each team member. Id. CTAs under GSA schedule contracts differ from traditional prime contractor/subcontractor arrangements in that: (1) each team member has privity of contract with the government, (2) each team member is responsible for its duties laid out in the CTA document, and (3) each team member must have a GSA schedule contract. Id.

The only instruction provided by the RFQ relating to responding with a CTA was contained in Amendment No. 2, issued on May 19. AR, Tab 3, Amend. 2 at 14. Amendment No. 2 contained the following question and answer:

Q87 Can a large business schedule holder form a joint venture with a small business schedule holder and receive small business evaluation credit?

No. A joint venture would have to be considered a separate legal entity. Even if both parties were on Schedule, the joint venture itself, would not be considered a Schedule holder.

However, a large business schedule holder may form a Contractor Teaming Agreement with a qualified small business schedule holder and receive the small business evaluation credit (See gsa.gov/cta) To be considered, a copy of the Teaming Agreement must be submitted along with the proposal, and the Teaming Agreement must clearly show that the small business is taking a lead position (performing the majority of the work).

Id.

Five vendors timely submitted proposals, including Brooks and Urban/Meridian. Urban/Meridian submitted a team proposal and as required by the RFP, Urban/Meridian submitted a copy of their unexecuted CTA with its proposal. AR, Tab 4, Urban/Meridian CTA. The CTA stated that Urban, both an 8(a) and a

small business, and Meridian were entering into an agreement to enable Urban to perform the services and for the purpose of submitting a joint bid to GSA for the performance of the contract. Id. The CTA identified Urban as the majority interest member and delineated the relative roles and responsibilities of the team members. Id.

As a result of the evaluation of proposals, Urban/Meridian was selected for award. The protester was notified of the award on June 27. Protest at 1. On June 28, Urban/Meridian executed the CTA. AR, Tab 5, Executed Urban/Meridian CTA. Notice of award was issued to Urban/Meridian on July 1. After receiving a debriefing, BRCS filed this protest with our Office.

DISCUSSION

BRCS argues that the agency improperly made award to an entity that was not a FSS 03FAC schedule contract holder as required by the solicitation. Protest at 5. BRCS maintains that Urban/Meridian is a joint venture and that GSA requires joint ventures to separately possess a schedule contract to be eligible for award. Comments at 1.

The protester maintains that specific provisions of the Urban/Meridian CTA create a joint venture and that the CTA did not comply with GSA's CTA document directives. Comments at 16. For example, the protester maintains that a provision of the CTA that empowers officers of both companies to negotiate with the government on behalf of both companies as a single entity is one of the hallmarks of a joint venture, wherein the acts of each joint venture bind both partners. Comments at 3.

The agency maintains that the task order was properly awarded to the Urban/Meridian team. Contracting Officer's Statement at 5. The agency responds that Urban/Meridian submitted a proposal as a team and submitted a CTA with their proposal that complied with GSA requirements. Id. The agency notes that both Urban and Meridian hold 03FAC schedule contracts and all of the services to be provided in response to the solicitation are contained on those schedule contracts. Id. The agency states that the Urban/Meridian agreement identifies the majority member, the roles and responsibilities of the parties, and the agency's understanding is that the CTA was for the purpose of providing services in response to the solicitation. Id. at 6. The contracting officer states that she reviewed the CTA and accepted it, and identified no deficiencies. Supplemental Contracting Officer's Statement at 2.

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). When an agency conducts a formal competition under the FSS program, we will review the agency's evaluation of

vendor submissions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. SI Int'l, SEIT, Inc., B-297381.5, B-297381.6, July 19, 2006, 2006 ¶ 114 at 11.

GSA encourages the use of CTAs as a means of maximizing a vendor's competitiveness. AR, Tab 9, GSA Schedules at 8. GSA requires that when CTAs are used, all team members must hold their own FSS contract for the specific requirements. Id. While GSA provides guidelines as to the elements of a CTA, GSA recognizes that CTA documents are necessarily tailored to individual team members. Id. Although GSA does not approve CTAs it does encourage ordering activities to review CTAs to ensure that the CTA clearly delineate team member responsibilities and provide for coordination and cooperation between team members. Id. at 9.

Our review of the record shows that the Urban/Meridian submission in response to the solicitation was specifically identified as a teaming agreement for the purpose of providing services in response to the solicitation. In addition, the CTA between Urban and Meridian identified the majority member and the roles and responsibilities of the parties. Given that both members of the Urban/Meridian team have the appropriate FSS contract and that the CTA defines each member's responsibilities to the satisfaction of GSA, we do not find GSA's award of a task order to Urban/Meridian to be unreasonable.

While the protester argues that the substance of the Urban/Meridian CTA has all the essentials of a joint venture and thus the protester maintains that the Urban/Meridian agreement created a joint venture.

We do not agree. Urban/Meridian's intent, as demonstrated in its agreement, was to create a CTA for the purpose of responding to this solicitation. In addition, Urban/Meridian appears to be following the guidance set forth in the questions and answers added to the solicitation by Amendment No. 2, i.e., the companies are adopting a teaming approach rather than establishing a new legal entity.

Each team member has the appropriate FSS contract and GSA has reviewed the CTA and determined that it adequately explains the team members' responsibilities. Thus, GSA's award to Urban/Meridian was reasonable.²

The protest is denied.

Lynn H. Gibson
General Counsel

² The protester also argues that the Urban/Meridian CTA does not conform to GSA's specific list of required elements for a CTA agreement. Comments at 15. Although the GSA website lists elements of a CTA agreement, GSA specifically recognizes that CTA documents are developed by individual team members and will vary. AR, Tab 9, GSA CTA Website. GSA encourages the submission of CTA documents so agencies can understand the team members' responsibilities and specifically how the arrangement works. Id.