



Decision

Matter of: JRS Management

File: B-401524.2

Date: January 12, 2010

Jacqueline Sims for the protester.

Dionis M. Gauvin, Esq., and David E. Erlewine, Esq., Bureau of Prisons, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that requirements contracts issued under challenged solicitation will lack consideration is denied where it is clear from the solicitation that each resulting contract will include the requisite consideration to form an enforceable contract.

DECISION

JRS Management, of Lawrenceville, Georgia, protests the terms of solicitation No. 61611-0001-9, issued by the Department of Justice, Federal Bureau of Prisons, for dental assistant and pharmacy technician services for the Federal Correctional Complex in Victorville, California. JRS asserts that the solicitation is defective because it reserves to the agency the right to award two requirements-type contracts, which JRS contends would render illusory the consideration necessary for an enforceable requirements contract.

We deny the protest.¹

¹ JRS also alleged that the agency's estimate of the quantity of dental assistant services required was overstated, inaccurate, and unreasonable. The GAO attorney assigned to the protest conducted outcome prediction alternative dispute resolution with the parties on December 28, 2009, during which he informed the parties that the protestor's challenge to the agency's estimate was likely to be sustained, due to errors in the agency's calculations. The attorney also informed the parties that, for the reasons set forth in this decision, the agency's selection of a requirements-type contract, or contracts, for the acquisition was unobjectionable. On December 30, the

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The agency issued the solicitation on May 20, 2009, contemplating the award of a firm-fixed-price requirements-type contract with a base period of one year and four option years. The solicitation states in relevant part as follows:

It is the intent of the government to make a single award for the services required in this solicitation (Dental Assistants (4) and Pharmacy Technicians (2)). However, the government reserves the right to make two (2) awards for the requested services if advantageous to the government. If two awardees are selected, it will result in separate indefinite delivery/requirements type contracts for each service (e.g. one award to a sole provider for the provision of Dental Assistant Services, and one award to a sole provider for the provision of Pharmacy Technician Services).

Solicitation, Amendment 3, at 1.

A requirements contract provides for filling all actual purchase requirements of designated government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor. Federal Acquisition Regulation (FAR) § 16.503(a). A requirements contract is formed when the seller has the exclusive right and legal obligation to fill all of the buyer's needs for the goods or services described in the contract. Modern Sys. Tech. Corp. v. United States, 979 F.2d 200, 205 (Fed. Cir. 1992). The promise by the buyer to purchase the subject matter of the contract exclusively from the seller is an essential element of a requirements contract. Id. A solicitation will not result in the award of an enforceable requirements contract where a solicitation provision disclaims the government's obligation to order its requirements from the contractor and therefore renders illusory the consideration necessary to enforce the contract. See Sea-Land Serv., Inc., B-266238, Feb. 8, 1996, 96-1 CPD ¶ 49 at 5.

The solicitation challenged in this case in no way disclaims the government's obligation to order its requirements from the eventual awardee or awardees, whose contract, or contracts, will quite clearly provide the consideration required for enforceability. Specifically, should the agency determine that it is in the best interest of the government to award two requirements contracts pursuant to this solicitation, one requirements contract for dental assistant services and one requirements contract for pharmacy technician services, the requisite consideration will be

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agency took corrective action consisting of reducing its estimate for dental assistant services to the quantity requested by the protester. However, JRS declined to withdraw its remaining protest challenges, and requested that our Office issue this decision.

provided in each case by the agency's promise to purchase all of the subject matter of each contract solely from the respective contract holder.²

The protest is denied.

Lynn H. Gibson
Acting General Counsel

² The protester also argues that the agency's selection of a requirements contract for the acquisition is inconsistent with FAR § 16.503(b), which states that "[a] requirements contract may be appropriate for acquiring any supplies or services when the government anticipates recurring requirements but cannot predetermine the precise quantities of supplies of services that designated Government activities will need during a defined period." We disagree, and conclude that the agency has amply demonstrated that, due to fluctuations in inmate population and institutional emergencies, it is unable to predetermine the precise quantity of services needed. Furthermore, the protester's arguments that the agency's requirements are not "recurring" needs, but rather daily needs, are wholly without merit.