



Decision

Matter of: Phoenix Environmental Design, Inc.

File: B-422950

Date: December 10, 2024

C. Chad Gill, for the protester.

Krishon Gill-Edmond, Esq., Department of Veterans Affairs, for the agency.

Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's decision to orally solicit quotations, and not publicize the solicitation, is denied where the agency's actions were reasonable and consistent with regulation.

DECISION

Phoenix Environmental Design, Inc. (PED), a service-disabled, veteran-owned small business (SDVOSB) of West Richland, Washington, protests the award of a contract to Walking Points Farms, LLC (WPF), an SDVOSB of Bremerton, Washington, under request for quotations (RFQ) No. 36C78624Q50407 issued by the Department of Veterans Affairs (VA), for peat moss at the Santa Fe National Cemetery in New Mexico. The protester contends the agency's decision to orally solicit quotations and failure to synopsize the contract action was unreasonable and contrary to regulation.

We deny the protest.

BACKGROUND

On August 29, 2024, the contracting officer (CO) received a procurement request (which the VA calls a "notice of assignment") for peat moss to be used at the Santa Fe National Cemetery in New Mexico. Contracting Officer's Statement (COS) at 1.¹ This

¹ Our Office did not issue a protective order in this matter because PED elected to proceed with its protest without counsel. The agency provided an unredacted version of the agency report to our Office and a redacted version of the report to the protester.

(continued...)

request included a statement of need, an independent government cost estimate (IGCE), and market research concerning potential vendors that could supply the required product. *Id.* at 1. The IGCE provided that for the required quantities of peat moss, the total estimated cost would be \$24,678. Agency Report (AR) Tab 1-4a, IGCE at 1.² The CO also conducted his own market research to find potential vendors. He explains there were 20 identified veteran-owned small businesses registered under the appropriate North American Industrial Classification System (NAICS) code on the Small Business Administration's (SBA) Veteran Small Business Certification database. COS at 2; AR, Tab 1-3b, SBA NAICS Code Search at 1. The protester was not included among these vendors. The CO further explained that because "[p]ricing of large bundles of peat moss was not readily available on the internet[,]” the CO contacted a supplier regarding pricing, but the firm did not respond to the CO's inquiry. COS at 2. As the CO provides, given the documents included in the notice of assignment (to include the IGCE), and that the “CO's own market research did not contradict the estimate or lead [the] CO to question the pricing information or potential for SDVOSB sources, [the] CO determined that an oral solicitation was the appropriate procurement approach because the requirement's estimated value was below \$25,000.” *Id.*

On August 30, in response to the CO's inquiry into possible market research, the contracting officer's representative (COR) provided a list of three “SDVOSB[s] we have worked with in the past that can provide [the] product to us.” AR, Tab 1-6, COR Market Research at 1. On September 4, the CO orally solicited these three vendors for a quotation. COS at 2. The CO received one quotation, from WPF, by the established due date. *Id.* at 2. Having found the quotation to be technically acceptable, on September 17, the CO awarded the contract to WPF in the amount of \$38,583.³ *Id.*; AR, Tab 1-11, WPF Quotation at 1. PED filed the instant protest on September 18.

DISCUSSION

The protester contends the agency's oral solicitation of vendors was contrary to law and regulation. In this regard, PED argues the VA has failed to adequately establish the reasonableness of its IGCE--with an estimated price of \$24,678--which in turn informed the agency's decision to orally solicit quotations. Instead, the protester argues because the awarded value of the contract exceeded \$25,000, the agency was required to publicize the solicitation, which would have allowed PED an opportunity to compete for award. See Protest at 1-6; Comments at 1-6; Supp. Comments at 1-4. The agency contends the CO's actions were reasonable and consistent with applicable regulation.

Our discussion, here, is necessarily general to avoid reference to proprietary or source selection sensitive information. *Spacesaver Storage Sys., Inc.*, B-298881, Dec. 11, 2006, 2006 CPD ¶ 196 at 2 n.2.

² All citations to the record are to the Adobe PDF document page numbers.

³ The CO ultimately found that the awarded price was fair and reasonable when considering the associated shipping costs of the large pallets of product from Canada. Supp. COS at 2.

Under simplified acquisition procedures, an agency is not required to use full and open competition to conduct a procurement (41 U.S.C. §§ 3301(a), 3305), but instead, is required to promote competition to the maximum extent practicable. Federal Acquisition Regulation (FAR) 13.104. This standard generally may be met through the solicitation of at least three sources. FAR 13.104(b); *Omni Elevator Co.*, B-246393, Mar. 6, 1992, 92-1 CPD ¶ 264 at 2. In conducting a simplified acquisition under FAR part 13, contracting officers have discretion to choose among a continuum of procedures--from the most informal (such as, here, oral solicitations) to the more formal and complex procedures available for negotiated acquisitions set forth in FAR part 15. See FAR 13.106-2(b). Contracting officers have considerable discretion in selecting the procedures applicable to each simplified acquisition procurement; where an agency's decisions, in this regard, are challenged, our Office will review the agency's actions for reasonableness. *Finlen Complex, Inc.*, B-288280, Oct. 10, 2001, 2001 CPD ¶ 167 at 8.

The relevant regulations governing the publication of contract actions are also germane to our analysis. The relevant regulations establish specific publication rules based on the expected value of the procurement. See generally FAR part 5. For contract actions expected to exceed \$25,000, FAR 5.201(b)(1)(i) explains that a contracting officer must generally transmit a notice to the governmentwide point of entry (GPE). See also FAR 5.101(a)(1). In contrast, under FAR 5.101(a)(2), for proposed contract actions expected to exceed \$15,000, but not expected to exceed \$25,000, the agency must generally synopsise the requirement either by displaying an unclassified notice of the solicitation in a public place or by appropriate electronic means. See also FAR 5.207(c) (concerning the preparation and transmittal of synopses). However, within this estimated dollar range, a contracting officer need not publicize the requirement "when oral solicitations are used." FAR 5.101(a)(2)(ii).

FAR part 13 provides guidance as to when a contracting officer might orally solicit quotations. FAR 13.106-1(c)(1) provides that a contracting officer shall solicit quotations orally to the maximum extent practicable if: (i) the acquisition does not exceed the simplified acquisition threshold;⁴ (ii) an oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and (iii) notice is not required under FAR 5.101 (Methods of disseminating information). The FAR cautions that an oral solicitation may not be practicable for contract actions exceeding \$25,000, unless covered by an exception in FAR 5.202 (Exceptions to synopses of proposed contract action).⁵ FAR 13.106-1(c)(2).

⁴ The applicable simplified acquisition threshold for this procurement is \$250,000. FAR 2.101.

⁵ FAR 5.202 provides for various exceptions to when a contracting officer is not required to transmit notice to the GPE; neither party alleges that any of these exceptions apply here.

With this regulatory framework as a backdrop, we turn to the merits of PED's protest. Specifically, the record here demonstrates the agency reasonably anticipated the contract would be awarded at or below \$25,000, thus allowing for an oral solicitation and not requiring synopsis. During the course of the protest, we asked the VA to provide detail on how it arrived at the \$24,678 dollar figure used for its IGCE. The COR explains that he called various vendors of the peat moss, conducted an online search, and reviewed past purchase requests made on government purchase cards. AR, Tab 1-17, COR Declaration at 1. Ultimately, the COR explained that given the dearth of information, he "relied on procurements data, from past purchase card purchases, that were available." *Id.* The CO explains that after attempting to conduct his own market research (to include attempting to contact a vendor of peat moss, and an internet search), he "relied solely on the [COR's] IGCE information and proceeded with oral solicitation." Supp. COS at 2.

We find reasonable the agency explanation for how it developed its estimate. Contemporaneous with the CO's receipt of the notice of assignment, the COR explained that the VA had ordered this type of peat moss before. See AR, Tab 1-2, Notice of Assignment (where the COR explains the agency "ordered direct" from the supplier before, without using a contract); AR, Tab 1-6, COR's Email of Potential Sources (providing SDVOSBs "we have worked with in the past that can provide product to us"). This information is consistent with the COR's declaration that he "reviewed past purchase requests made on government purchase card[s] to develop the cost estimate." AR, Tab 1-17, COR Declaration at 1. Reliance on past purchase data is a permissible tool to develop a cost estimate. See FAR 15.404-1(b)(2)(ii). The protester suggests the record is inconsistent, where the contracting officer said he could not find any prior purchase history of peat moss (COS at 4), yet the COR "reviewed past purchase requests made on government purchase card to develop the cost estimate." AR, Tab 1-17, COR Declaration at 1. However, the agency explains that the prior peat moss purchases were made using a purchase card (Supp. Memo. of Law at 2), rather than through a procurement contract, so the CO's assertion that he was unable to find these historical purchases when conducting his review of prior contracts is reasonable and does not demonstrate that the agency's position is inconsistent. In this regard, the CO's reliance on information provided by the COR located with the ultimate customer of the previous purchases and the current acquisition of peat moss was reasonable.⁶

Finding no basis to question the reasonableness of the agency's anticipation that the acquisition would not exceed \$25,000, we turn next to whether the use of an oral solicitation was consistent with the requirements of FAR 13.106-1(c). As noted above,

⁶ PED objects to the level of detail provided by the agency in support of its IGCE, but has failed to provide any reasonable countervailing evidence (e.g., its list pricing, commercial pricing, other pricing information) to suggest that the IGCE was unreasonable. See *Space Sys./Loral LLC*, B-413131, Aug. 22, 2016, 2016 CPD ¶ 242 at 12 ("Where, as here, our Office reviews a challenge to government estimates for reasonableness, a protester's disagreement with an agency's basis for developing a government estimate, by itself, provides no basis to sustain a protest.").

the FAR provides “a contracting officer shall solicit quotations orally to the maximum extent practicable” if three conditions are met. Here, all three of these conditions are satisfied. The first condition is that the “acquisition does not exceed the simplified acquisition threshold[.]” FAR 13.106-1(c)(1)(i). Here, both the estimated value and actual award amount are well below the \$250,000 threshold. The second condition requires that an “[o]ral solicitation is more efficient than soliciting through available electronic commerce alternatives[.]” FAR 13.106-1(c)(1)(ii). Here, the CO explains that given the nature of the VA’s requirement and the agency’s timeline (*i.e.*, near the end of the fiscal year), he believed an oral solicitation to be most advantageous for the agency. See COS at 2; Supp. COS at 1-2.

The third condition requires that “[n]otice is not required under FAR 5.101.” FAR 13.106-1(c)(1)(iii). As applied, notice is not required under that section of the FAR. That is because where, as here, the contract action is expected to be between \$15,000 and \$25,000 (see FAR 5.101(a)(2)), a “contracting officer need not comply with the display requirements of this section . . . when oral solicitations are used[.]” FAR 5.101(a)(2)(ii). As such, because the agency satisfied the requirements found in FAR 13.106-1(c)(1), we find no basis to object to the CO’s use of oral solicitation procedures or decision not to synopsize the solicitation.

In sum, the agency reasonably believed the proposed purchase would fall below \$25,000; therefore, we find no basis to object to the agency’s oral solicitation of quotations (FAR 13.106-1(c)(1)) or its failure to publish its solicitation (FAR 5.101(a)(2)).

The protest is denied.

Edda Emmanuelli Perez
General Counsel