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Decision

Matter of: Bluewater Management Group, LLC

File: B-414785

Date: September 18, 2017

Daniel Strouse, Esq., and John J. O'Brien, Esq., Cohen Mohr LLP, for the protester. Jonathan T. Williams, Esq., and Kathryn V. Flood, Esq., Piliero Mazza, LLC, for DMC Management Services, LLC, the intervenor.

Johanna Crawford, Esq., and Max Jenkins, Esq., Department of the Navy, for the agency.

Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of the issuance of a task order to a firm pursuant to the firm's Federal Supply Schedule contract is sustained where the agency failed to consider whether the services offered by the firm are included in its schedule contract, and the record establishes that the firm's quotation was based on providing a service not included in its schedule contract.

DECISION

Bluewater Management Group, LLC, a service-disabled veteran-owned small business, of Norfolk, Virginia, protests the issuance of a task order to DMC Management Services, LLC under request for quotations (RFQ) No. N32205-16-R-2374 (e-Buy No. 1117467), issued by the Department of the Navy, Military Sealift Command, to small business holders of the General Services Administration's (GSA) Federal Supply Schedule (FSS) 48, for lodging and transportation services. Bluewater contends that the award was improper because DMC's schedule contract did not include the transportation services sought by the solicitation.

We sustain the protest.

BACKGROUND

The agency issued the RFQ via the GSA's e-Buy system pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4, to procure temporary lodging

and transportation services.¹ The RFQ sought quotations to provide lodging and transportation services to civil service mariners assigned to the Military Sealift Command at the Norfolk Naval Base in Norfolk, Virginia. RFQ at 8. The RFQ's scope of work required the awardee to provide an average of 120, but up to as many as 250, extended-stay hotel rooms within 25 miles of the naval base. Id. Central to this protest, the RFQ also required the awardee to provide daily round trip transportation to the naval base at times prescribed in the solicitation. Id. at 12. The lodging and transportation requirements were identified as separate contract line items (CLINs) in the RFQ.

The RFQ contemplated the establishment of a single, fixed-price, indefinite-delivery requirements task order with a small business vendor. RFQ at 23-24. The record shows that only vendors holding a schedule 48 contract including Special Item Number (SIN) 653-9, long-term lodging, were invited by the agency to submit a quotation; however, the RFQ makes no reference to the schedule or SIN. Agency Report (AR), Tab 27, e-Buy Vendor Notification Screenshot. Vendors were required to submit proposals through GSA's e-Buy system, which instructed them that all products and services offered must be on the vendor's current GSA schedule contract, and reminded vendors not to include open market items with their quotations. Protest at 2-3. The RFQ did not preclude potential vendors from offering services included on other FSS contracts or submitting a quotation as a contractor team to ensure the requirements would be met.

Schedule 48 offers federal agencies an array of services relating to transportation, delivery, and relocation services, listed under individual SINs. AR, Tab 13, FSS 48 Brochure Excerpts, at 1. For example, as relevant here, SIN 653-9 under schedule 48 is for corporate housing facilities to accommodate such things as employee relocations or extended training needs. Id. at 1; AR, Tab 14, SIN 653-9 Statement of Work, at 2. As another example, SIN 411-1 is for the provision of ground transportation services for passengers. The statement of work in the standing solicitation under which schedule contracts are awarded for the lodging SIN (653-9) anticipates that vendors may offer agencies a wide range of amenities to complement the long-term lodging, including, but not limited to, housekeeping, utilities, transportation, and fitness facilities. AR, Tab 14, SIN 653-9 Statement of Work, at 2, 5. The SIN's statement of work requires that these amenities be disclosed as additional services with pricing information before a government customer may lease a unit where these services would be used. Id. at 3. The statement of work provides a pricing format that offerors are required to include when submitting an offer under a multiple award schedule solicitation, demonstrating

¹ The e-Buy system is an online RFQ tool designed to facilitate the submission of quotations for a wide variety of commercial goods and services under GSA schedules and technology contracts. <https://www.gsa.gov/tools/supply-procurement-etools/ebuy> (last visited Sept. 13, 2017).

how such additional services could be described and priced as separate items on a vendor's schedule contract.² Id. at 4-5.

Here, the task order solicitation requested fixed prices for two CLINs for a base year and each of four 1-year option periods of performance. Id. at 3-7. One of these CLINs requested a per-day unit price for lodging services. Id. The second requested a per-day unit price for the transportation services. Id. Each of these CLINs included estimated quantities to create a net price for evaluation purposes; however, the RFQ stated that the Navy would pay only for the actual number of rooms occupied and round trips made to the naval base. Id. at 9, 13.

The Navy received quotations only from Bluewater and DMC by the August 26, 2016, closing date. Contracting Officer's Statement of Facts/Memorandum of Law (COSF/MOL) at 3. DMC holds a single FSS schedule 48 contract with SIN 653-9 as its only SIN, listing prices for three types of lodging and identifying only housekeeping services as an additional service, with applicable pricing. AR, Tabs 15, 16, DMC's Schedule 48 Contract and Contract Brochure. Bluewater holds two FSS schedule contracts, one for schedule 48, SIN 653-9, and one under schedule 599 that, according to Bluewater, includes ground transportation services and associated pricing. Protester's Comments at 12.

After an initial evaluation, the agency conducted discussions and received revised quotations from both vendors. COSF/MOL at 3. After evaluating the revised quotations, the Navy issued the task order to DMC on May 31, 2017, for an evaluated price (including base and option years) of \$38,009,781. Id. Bluewater received a debriefing on June 8, 2017, and this protest followed.

DISCUSSION

Bluewater argues that the award is improper because the transportation services sought by the solicitation are outside the scope of DMC's schedule 48 contract. Protest at 3-4. The protester contends that DMC's schedule 48 contract does not include, nor does it provide pricing for, the transportation services required. Id. Bluewater further alleges that the agency conceded, during Bluewater's debriefing, that the Navy did not consider whether the services were included in DMC's schedule contract. Id.; Protester's Comments at 5. The protester argues that the agency is precluded from accepting a quotation based on a schedule contract that does not include the services required by the task order. Protester's Comments at 2-5.

² In this regard, vendors are instructed to provide pricing as a percentage discount off per diem rates for government lodging, and a discount off commercial rates for additional types of services listed on the vendor's schedule. AR, Tab 14, SIN 653-9 Statement of Work, at 4-5.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.401(a). Orders placed using the procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3); FAR § 6.102(d)(3). Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4. Where an agency orders from an existing FSS, all items quoted and ordered are required to be on the vendor's schedule contract as a precondition to receiving an order. Science Applications Int'l Corp., B-401773, Nov. 10, 2009, 2009 CPD ¶ 229 at 2.

Here, the Navy argues that the transportation services are within the scope of DMC's schedule 48 contract as ancillary services necessary to complete the lodging requirements of the task order.³ COSF/MOL at 4-5. The Navy provides no legal authority for this assertion, nor does it provide any evidence that DMC's schedule contract listed these services or otherwise explain why the transportation services are not required to be listed and priced on the FSS contractor's schedule. Citing to the statement of work for SIN 653-9, the Navy asserts that it requires vendors to provide a "full range of services necessary to satisfy Long Term Lodging requirements," including provision of "shuttle services," and insists that transportation services are therefore included in the vendors' schedule 48/SIN 653-9 contracts. COSF/MOL at 4-5.

More specifically, the agency contends that it may purchase the services as "other direct costs" in accordance with ordering guidelines issued by GSA. Id. at 6. In this regard, the agency relies on the following language from these guidelines:

Other Direct Costs (ODCs) are charges in direct support of a service. They are commercial items. To the extent possible, all anticipated ODCs associated with performance and within the scope of the GSA Schedule contract should be offered as separately listed items, and have an established contract price. . . . GSA schedules currently provide an Ancillary Supplies and/or Services [SIN] that can support supplies or services from a specific schedule. Note these supplies and services can only be purchased in support of other supplies/services available through that specific Schedule or SINs listed in the description.

Id., citing GSA Ordering Guidelines, <http://www.gsa.gov/portal/content/200369> (last visited Aug. 28, 2017). The Navy also cites our decision in Singhal & Co., Inc., B-412787, May 31, 2016, 2016 CPD ¶ 156, as support for the agency's assertion that

³ While the Navy, in its report, cites to DMC's schedule 48 contract and brochure for SIN 653-9, neither of these documents (as provided by the agency) lists or prices the transportation services. COSF/MOL at 4-5, citing AR, Tab 15, Awardee's schedule 48 contract; AR, Tab 16, Awardee's SIN 653-9 Brochure.

the transportation services here were appropriately treated as other direct costs in support of the lodging requirement. Id.

On this record, and as explained below, we find the Navy's assertions unavailing. The agency's argument that the transportation services were properly awarded as "other direct costs" is incorrect. While the Navy cites language from the GSA ordering guidelines to support its premise, we find that language contradicts the agency's position. As shown above, the guidelines state that "all anticipated ODCs associated with performance and within the scope of the GSA Schedule contract should be offered as separately listed items, and have an established contract price." GSA Ordering Guidelines, supra (emphasis added). On this record, the transportation services proposed by DMC do not meet this requirement here, as they are not listed on DMC's schedule and have no established contract price.

In the context of a procurement conducted under FSS procedures, other direct costs are "charges in direct support of a service," and must be within the scope of an FSS contract and have established prices. See GSA Ordering Guidelines, Other Direct Costs, supra. Here, ground transportation is a distinct service required to perform the task order and not merely required to support the provision of lodging services. Further, while the statement of work for SIN 653-9 provides a mechanism to include such additional services, DMC's schedule contract does not describe or provide pricing for transportation services.⁴ Because the services were neither described nor priced in DMC's schedule 48 contract, they are beyond the scope of that contract and cannot be ordered as other direct costs.

The agency's reliance on our decision in Singhal is also misplaced. That protest of an FSS procurement involved a challenge of an agency's price evaluation of open market items that the protester had offered, where the RFQ limited the value of orders that could be placed for open market items to \$3,500. Here, as the agency asserts repeatedly in the record, the transportation services were not being procured as open market items. See COSF/MOL at 2, 5, 6. Further, in Singhal, the RFQ specified that where an "other direct cost" item did not have an applicable schedule or SIN, it was to be identified as an open market item. Singhal & Co., Inc., supra, at 2.

⁴ When used, an ancillary supplies and/or services SIN provides a means for the purchase of supplies and/or services that are not within the scope of any other SIN on a schedule. See, e.g., SIN 003 100 under GSA FSS 03FAC, for Facilities Maintenance and Management, <http://www.gsaelibrary.gsa.gov/ElibMain/sinDetails.do?scheduleNumber=03FAC&specialItemNumber=003+100&executeQuery=YES> (last visited Sept. 11, 2017). This SIN, representative of others, describes ancillary services as necessary to complement a vendor's offering from another SIN on the same schedule, but not the primary purpose of the task order. Id. When included, vendors include a list or description of the particular ancillary services offered and a means of establishing contract pricing. Here, Schedule 48 does not include an ancillary supplies and/or services SIN and one cannot be assumed into a vendor's FSS contract.

It is undisputed that the awardee's schedule 48 contract does not include a SIN for transportation services or otherwise list pricing for transportation services.⁵ Agency Supp. Filing at 1. The Navy's acceptance of DMC's quotation and award of the task order was improper because, as noted above, an agency cannot lawfully use the FSS ordering procedures to order services that are not included on a vendor's schedule contract. Symplicity Corp., supra, at 5. The agency does not refute the protester's contention that it failed to consider whether the required services were included on the awardee's schedule contract, nor does the record document such a determination. We sustain the protest on this basis.

RECOMMENDATION

We recommend that the Navy cancel the award made to DMC and reevaluate both vendors' quotations to determine whether the required transportation services are within the scope of their respective schedule contracts before making a new award decision. If no offeror is eligible for award under the terms of the solicitation, we further recommend that the agency cancel the procurement and resolicit for the required services in accordance with the applicable procurement laws and regulations. In this regard, the agency may wish to consider reviewing its requirements and conducting market research to determine the best means of procuring these services.⁶ We also recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its claim for such costs, detailing and certifying the time expended and costs

⁵ The protester concedes that its own schedule 48 contract also does not include pricing for transportation services, but asserts that its quotation offered the transportation services by referencing another GSA schedule contract Bluewater holds that includes such services. Protester's Comments at 12. Because Bluewater submitted the only other quotation to the Navy in response to the solicitation and could be in line for award, its direct economic interest is affected by the award to DMC. Therefore, the protester is an interested party to maintain this protest. See 4 C.F.R. §21.0(a).

⁶ While we sustain the protest on the basis that the transportation services were beyond the scope of DMC's schedule contract, we note that the statement of work for SIN 653-9 states that task orders for lodging services under that SIN must be at least 30 days in duration. AR, Tab 14, SIN 653-9 Statement of Work, at 1 (emphasis added). This minimum stay is similarly reflected in DMC's and Bluewater's schedule 48 contract brochures. See AR, Tab 16, DMC Schedule 48 Brochure, at 1; see also AR, Tab 18, Bluewater Schedule 48 Brochure, at 4. However, the scope of work in the solicitation expressly states that the task order is not intended for stays in excess of 30 days. RFQ at 8.

incurred, with the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

This protest is sustained.

Susan A. Poling
General Counsel