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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Aleman & Associates, Inc.

File: B-287275

Date: May 17, 2001

Albert T. Aleman, Jr., for the protester.
Michael K. Cameron, Esq., Department of Justice, Immigration and Naturalization Service, for the agency.
Jeanne W. Isrin, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's issuance of purchase orders to maintain interim services while competitive procurement for the same services was ongoing violated Federal Acquisition Regulation (FAR) requirements because (1) they were not procured using full and open competition; (2) their requirements were not synopsized in the Commerce Business Daily (CBD); and (3) the protester was not sent a copy of the solicitations, is denied. The purchase orders were issued using the simplified acquisition procedures of FAR Part 13 which, under the circumstances here, do not require full and open competition or CBD synopsis, and did not mandate distribution of the solicitations to the protester.

DECISION

Aleman & Associates, Inc. protests the issuance of purchase order Nos. ACD-1-P-0001, ACD-1-P-0002, ACD-1-P-0003, and LRT-1-P-0060 by the Immigration and Naturalization Service (INS), Department of Justice, for janitorial and grounds maintenance services at border patrol stations and related INS facilities in the Laredo, Texas area.

We deny the protest.

The 12 facilities covered by the 4 purchase orders employ Border Patrol agents who are responsible for apprehending illegal immigrants and maintaining custody of them at the facilities. Contracting Officer's Statement at 1. INS previously had procured the required janitorial and grounds maintenance services for 11 of the facilities competitively, which had resulted in purchase orders to 3 different contractors; one

(the precursor of ACD-1-P-0001) covered 7 facilities, another (the precursor of ACD-1-P-0003) covered 3 facilities, and the third (the precursor of ACD-1-P-0002) covered 1 facility. (The 12th facility, the Laredo North Station, which is the subject of purchase order LRT-1-P-0060, was not yet open at that time.)

Subsequently, INS decided to consolidate its requirements in the interest of higher quality performance, efficiency in acquisition, and consistency in services received. Id. INS issued request for quotations (RFQ) No. ACD-8-Q-0024, set aside for small businesses, for the services to be provided at the original 11 facilities plus the Laredo North Station, which was scheduled to open on November 1, 2000. The RFQ provided for award on a best value basis. RFQ at 10.

Five quotations were received on June 2, 2000. The agency evaluated them and made a competitive range determination, which included Aleman's quotation. Subsequently, amendments were issued, and revised quotations were received on August 25. Due to a protracted review process and lack of personnel resources, evaluation of revised quotations was delayed. Meanwhile, the 3 purchase orders under which the services were being performed at the 11 existing facilities were due to expire in late September. According to the agency, because the illegal immigrants are held at the facilities for an average period of 125 days, there is significant potential for the spread of disease, and it therefore is imperative that the facilities be maintained in clean condition without interruption of services. Agency's Response Brief at 2. In order to meet the interim need, purchase orders ACD-1-P-0001, ACD-1-P-0002, and ACD-1-P-0003 were issued to the incumbent contractors, using the simplified acquisition procedures of Federal Acquisition Regulation (FAR) Part 13, for a 3-month period.[1]

Similarly, since the competitive procurement for the services had not been completed and the Laredo North Station was scheduled to open on November 1, in October INS attempted to obtain the required services for the Laredo North Station. Pursuant to simplified acquisition procedures, the agency solicited quotes from three businesses, but it received only one quote, and that vendor turned out to be a large business. After other potential small business sources were identified by the Dallas INS office, contracting officials solicited an additional quote from Pais Janitorial Services and Supplies, Inc. Since the quotation was determined fair and reasonable, and contracting officials had had positive experience with the firm, purchase order LRT-1-P-0060 was issued to Pais for 3 months for $21,749.10.

Meanwhile, further revised quotations in the "consolidated" procurement were requested by February 20, 2001. On February 13, Aleman protested to our Office about (1) an alleged ambiguity in the RFQ as amended; (2) the delay in completing

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[1] The orders subsequently were extended for 2 additional months because the "consolidated" procurement still was in process.

the competitive procurement; and (3) the issuance of purchase orders ACD-1-P-0001, ACD-1-P-0002, ACD-1-P-0003, and LRT-1-P-0060. The agency subsequently canceled the RFQ, rendering the protest academic as to that solicitation and the first and second allegations above.[2]

Aleman argues that the interim purchase orders were improperly issued because they were not procured using full and open competition; the contract actions were not synopsized in the Commerce Business Daily (CBD); and Aleman was not asked for quotations.

We find no improper action by the agency in issuing the interim purchase orders.

Initially, we point out that under the Federal Acquisition Streamlining Act of 1994 (FASA), simplified acquisitions--which must be used to purchase supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed $100,000 (FAR §§ 2.101, 13.000)--are excepted from the general requirement that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 41 U.S.C. § 253(a)(1)(A), (g)(1), and (g)(3) (1994). These simplified procedures are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, FASA only requires that agencies obtain competition to the maximum extent practicable when they utilize simplified acquisition procedures. 41 U.S.C. § 427(c); FAR § 13.104; Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 2.

Sole-Source Purchase Orders ACD-1-P-0001, ACD-1-P-0002, and ACD-1-P-0003

Consistent with the maximum-extent-practicable standard, an agency may solicit from a single source if the contracting officer determines that the circumstances of the contract action mean that only one source is reasonably available, for example, in the case of urgency. FAR § 13.106-1(b). As a general rule, we will not object to a sole-source award unless it is shown that the agency acted without a reasonable basis. See Ion Exchange Prods., Inc., B-218578, et al., July 15, 1985, 85-2 CPD ¶ 52 at 4.

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[2] Also canceled was solicitation No. ACD-1-Q-0008, which the agency had issued on March 1 to competitively procure its short-term requirements for the 12 facilities while the long-term procurement was still pending. The basis for the cancellation of both was the agency's determination that the required services had to be procured from either the National Industries for the Blind or the National Industries for the Severely Handicapped, pursuant to FAR Part 8. The cancellation of both is the subject of another protest by Aleman to our Office.

INS's response to the protest indicates that the bases for issuing purchase orders ACD-1-P-0001, ACD-1-P-0002, and ACD-1-P-0003 to the incumbents on a sole-source basis were, among other things, that (1) each was of relatively short duration--3 months--and low cost;[3] (2) it was believed that the competitive procurement for all 12 facilities would be completed in a relatively short time frame; (3) the incumbents' prices were considered fair and reasonable since they did not change from the previously completed purchase orders; and (4) the incumbent contractors had personnel with the requisite security clearances in place, whereas a new contractor would require approximately 1 month to gain employee security clearances.

Nothing in the record establishes that the protester could have met the government's needs within the required time frame; Aleman, for example, does not claim that it could have provided personnel with the requisite security clearances. Under the circumstances, it was not unreasonable, in our view, for contracting officials to issue the purchase order to the only known qualified source for each contract. We have held that a sole-source award is justified where time is of the essence and only one known source can meet the government's needs within the required time. See Ion Exchange Prods., Inc., supra.[4]

Competed Purchase Order LRT-1-P-0060

When using simplified acquisition procedures, the necessary maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. FAR § 13.104(b). Generally, for purchases under $25,000, as here, the solicitation of three suppliers is sufficient. FAR §§ 5.101, 13.104(b); Bosco Contracting, Inc., supra, at 2-3.

As stated above, contracting officials solicited quotes from three local contractors, and when they received only one quote, and that from a large business concern, they solicited yet another small business source. The agency thus complied with the regulations applicable to the circumstances here.

Aleman claims that because it was participating in the "consolidated" contract, INS officials should have asked the company for a quotation. We in fact have held that

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[3] The orders are valued at less than $25,000 ($13,584.72, $9,896.18, and $9,109.89, respectively).

[4] The record does not explain why the agency took so long to evaluate quotations in the "consolidated" procurement (now canceled)--INS's only statement is that the review process was protracted and that agency lacked personnel resources. It nevertheless appears that when INS initiated the procurement, in April 2000, there was adequate time to complete it before the incumbents' contracts expired, and we have no reason to believe that the delay should have been foreseen.

"maximum practicable competition" means that a responsible firm that expressly requests to quote must be given an opportunity to do so, even where three or more suppliers have already been solicited. See Gateway Cable Co., B-223157 et al., Sept. 22, 1986, 86-2 CPD ¶ 333 at 4-5. Here, however, Aleman did not ask to compete for the interim contract, and we do not agree with Aleman's suggestion that INS was legally obligated to infer interest on the firm's part for a short-term, single-facility contract from Aleman's submission of a quotation on the long-term, 12-facility one.

Finally, Aleman argues that contracting officials violated FAR requirements because they failed to publish a synopsis of the interim procurements in the CBD. However, to determine notice requirements for a procurement conducted under simplified acquisition procedures, FAR § 13.105 refers to FAR § 5.101, which provides that contract actions need be synopsized in the CBD only if they are expected to exceed $25,000. FAR § 5.101(a)(1). Since none of the four contract actions at issue was expected to exceed $25,000 (and, in fact, none exceeded that amount), synopsizing in the CBD was not required.

The protest is denied.

Anthony H. Gamboa
General Counsel