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**Comptroller General
of the United States**

**United States General Accounting Office
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Decision

Matter of: Avalon Integrated Services Corporation

File: B-290185

Date: July 1, 2002

John E. Jensen, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for the protester.
James J. Regan, Esq., John E. McCarthy, Jr., Esq., and Daniel R. Forman, Esq.,
Crowell & Moring, for ICF Consulting, Inc., an intervenor.
Gloria Hardiman-Tobin, Esq., Federal Highway Administration, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that task order exceeds scope of vendor's Federal Supply Schedule (FSS) contract is denied where vendor holds FSS contract for pertinent schedule item number and vendor's FSS contract includes each of the labor categories designated in the task order.
2. In competitive procurement under the FSS program, agencies are not required to conduct discussions, even in the absence of a solicitation clause warning vendors that award might be made without discussions.
3. In competitive procurement under the FSS program, where solicitation provided for evaluation of written proposals followed by oral presentations by "offerors found to be in the competitive range," contracting agency was not required to hold discussions with vendors prior to selecting vendor with which to place order; at least in the context of an FSS purchase, retention of proposal in a competitive range does not create a right to discussions.

DECISION

Avalon Integrated Services Corporation protests the issuance of a task order to ICF Consulting, Inc. under its Federal Supply Schedule (FSS) contract, pursuant to request for proposals (RFP) No. PR#45-02-2011, issued by the Federal Highway Administration (FHWA) for strategic support communications services. The protester contends that ICF's schedule contract does not include several of the schedule item numbers (SIN) under which services are sought; that the agency

improperly failed to conduct discussions with it; and that the agency misevaluated its proposal.

We deny the protest.

The RFP, which sought proposals to furnish technical, editorial, graphics, and other support services to FHWA's Office of Research, Development, and Technology and in support of the agency-wide Research and Technology program, was issued on January 31, 2002, to seven vendors holding contracts under General Services Administration (GSA) Schedule 738, Marketing, Media and Public Information Services. The solicitation identified the staff positions to be filled and furnished an estimate as to the level of effort required for each. A period of performance not exceeding 60 months (a base year, plus four 1-year options) was contemplated.

The RFP provided for a two-phase evaluation process culminating in issuance of an order to the vendor whose proposal was considered most advantageous to the government. Under phase I, written proposals were to be evaluated in accordance with the following criteria:

1. Qualifications of Key Personnel (Primary and Supporting)--30 points
2. Relevant Experience--30 points
3. Management Approach and Understanding of the Government's Requirements--40 points
 - a. Proposed team
 - b. Understanding of Government requirements
 - c. Plan of performance
 - d. Innovative approach

The solicitation provided that offerors "found to be in the competitive range" would then move on to phase II, which would consist of an oral presentation "addressing criteria published in the Statement of Work." The oral presentations were to be evaluated in accordance with the same criteria as the written proposals.

Four vendors submitted proposals prior to the February 22 closing date. After reviewing and scoring the written proposals, the evaluation panel invited all four vendors to make oral presentations. The oral presentations were conducted on March 12, and vendors were then given until March 14 to submit final prices.

The evaluators assigned ICF's proposal the highest technical rating; in addition, ICF's overall price of \$3,933,138 was lowest. Avalon's price was \$4,679,227.81. On March 26, the FHWA issued an order to ICF and notified Avalon that it was not the successful vendor.

Avalon argues that ICF's FSS contract does not include several SINs under which services are to be provided; accordingly, the protester asserts, the task order issued to ICF is beyond the scope of ICF's contract. The protester alleges in this regard that ICF has a contract for SIN 738-8 only, whereas the solicitation also requires services under SINs 738-2, 738-3, and 738-10.

Schedule 738 is comprised of 12 SINs. SIN 738-2 is for website design and maintenance services; SIN 738-3 is for trade shows/exhibits and conference and events planning services; and SIN 738-10 is for commercial photography services. SIN 738-8 is for full service marketing, media, and public information services,¹ and the schedule instructs ordering agencies to use this SIN when their task requires at least two or more services specified under other SINs.

Avalon holds schedule contracts for SINs 738-1, 738-2, 738-3, 738-4, 738-5, 738-6, 738-8, 738-10, 738-11, and 738-12. ICF holds a contract for only SIN 738-8.

GSA, which is responsible for administering the FSS program, states that in view of the variety of services identified in the SOW,² it believes that FHWA was correct in using SIN 738-8, which is to be used when two or more services available under other SINs are needed to fulfill a requirement. Letter from the Director, Special Program Division, Services Acquisition Center, GSA, to the Contracting Officer, Apr. 24, 2002, at 3. Consistent with that view, we think it irrelevant that ICF, which holds a schedule contract for SIN 738-8, does not also hold a schedule contract for SINs 738-2, 738-3, and 738-10. We also note, in connection with the question of whether the scope of the task order issued to ICF exceeds the scope of its FSS contract, that ICF's schedule contract includes each of the ten labor categories designated in the task order. Accordingly, the record does not support the protester's argument that the task order issued to ICF exceeds the scope of its FSS contract.

Next, Avalon argues that the agency erred in failing to conduct discussions with it regarding the weaknesses in its proposal. The protester maintains that discussions were required because the agency established a competitive range, in which it was included, and Federal Acquisition Regulation (FAR) § 15.306 requires that once a

¹ The schedule also includes the following other SINs: 738-1--Market Research, Media Analysis, and Related Services; 738-4--Press and Public Relations Services; 738-5--Public Education and Outdoor Marketing and Media Services; 738-6--Radio, Television, and Public Service Announcements Services; 738-7--Introduction of New Products or Services; 738-9--Direct Mail Services; 738-11--Commercial Art and Graphic Design Services; and 738-12--Videotape and Film Production Services.

² According to GSA, the services to be provided fall under at least four SINs: 738-2, 738-4, 738-5, and 738-11.

competitive range is established, meaningful discussions must be conducted with all offerors in it.

As a preliminary matter, the procedures of FAR part 15—including FAR § 15.306, the provision on which Avalon relies—do not govern competitive procurements under the FSS program. Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4. Rather, because the RFP here provided for issuance of a task order under the selected vendor’s FSS contract, the provisions of FAR subpart 8.4 apply. There is no requirement in FAR subpart 8.4 that an agency soliciting vendor responses prior to issuing an order under an FSS contract conduct discussions with vendors regarding the content of those responses. Accordingly, and consistent with the nature of FSS purchases, we conclude that agencies are not required to conduct discussions, even in the absence of a solicitation clause warning vendors that award might be made without discussions.

Further, while the use of the term “competitive range” was probably inappropriate here—since, at least in a negotiated procurement using FAR part 15 procedures, the purpose of establishing a competitive range is to hold discussions with those offerors whose proposals are the most highly rated, see FAR § 15.306(c)(1)—we do not believe that the agency’s decision to include the vendors’ proposals in a “competitive range” created an obligation to conduct discussions. While it is not clear what purpose is served by creating a competitive range if no discussions are conducted, the failure to conduct discussions does not create a basis of protest, at least in the context of this FSS purchase. In this regard, we note that, under analogous circumstances, even in a procurement conducted using FAR part 15 procedures, the mere establishment of a competitive range, without more, would not give rise to a basis for protest. That is, where the solicitation notified offerors that the agency reserved the right to make award without discussions, see FAR § 15.306(a)(3), and the agency established a competitive range but proceeded to make award without holding discussions with any offeror, we would not entertain a protest by a competitive range offeror complaining that no discussions had been held.

Finally, the protester argues that the agency erred in evaluating its proposal, taking issue with various criticisms excerpted from the evaluators’ combined summary evaluation of the written proposals and oral presentations.

Based on our review of Avalon’s proposal and the agency’s evaluation of it, we think that the overall technical score assigned the proposal (84.6 of 100 total points) was reasonable. First, it appears that some of the comments to which the protester objects had a negligible impact on the protester’s score. For example, in response to the protester’s complaint that it was unfair for the agency to have penalized it for having received awards during the 1990s, the agency notes that while it did make reference to Avalon’s period of peak performance, as measured by awards, as having been during the years 1995-1997, this “was an insignificant issue in the overall

evaluation.”³ Agency Supplemental Statement, May 8, 2002, at 5. Likewise, it is apparent from the excellent scores that the protester’s proposal received under the first two evaluation factors—i.e., 27.3 (of 30) under the Qualifications of Key Personnel factor and 27.2 (of 30) under the Relevant Experience factor—that the evaluators did not regard the protester’s proposal as having any major shortcomings with regard to these factors.

It is clear from the record that the principal evaluation criterion under which Avalon lost points was the Management Approach and Understanding of the Government’s Requirements factor, under which it received an average score of 29.8 of 40. It is also clear that the evaluators had a reasonable basis for downgrading Avalon’s proposal under this factor. For example, the evaluators expressed concern that the proposed project director was not sufficiently attentive to administrative detail; that the proposal had not adequately explained how Avalon intended to accomplish the SOW tasks offsite; that the written proposal had not addressed issues of timeliness in getting products out or the specifics of workflow, steps, and task monitoring; and that Avalon had not proposed an innovative approach addressing the plan of performance. While in the protest Avalon took issue with these characterizations of its proposal, arguing, for example, that “[i]t is common knowledge among the people who work with the project manager that he is fastidious in his attention to detail,” Attach. to Protest at 2, and that it did present “some very practical innovations” in its oral presentation, Attach. to Protest at 4, these are merely differences of opinion with the evaluators’ judgments, which do not demonstrate the unreasonableness of the evaluators’ findings. Oceaneering Int’l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 6-7. Further, Avalon made no response to the agency report in this regard, instead simply asking that the case be decided on the existing record. Based on our review of the record, we see no reason to object to the agency’s evaluation of Avalon’s proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ The specific comment to which Avalon refers is as follows: “If measuring performance by awards . . . then their peak performance was during the years 1995-1997.”