



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: American Systems Consulting, Inc.

File: B-294644

Date: December 13, 2004

Daniel A. Bellman, Esq., and William R. Wernet, Esq., for the protester. Devon E. Hewitt, Esq., Daniel S. Herzfeld, Esq., and Orest J. Jowk, Esq., Shaw Pittman LLP, for ManTech Advanced Systems International, an intervenor. William Mayers, Esq., Defense Information Technology Contracting Organization, and Robert D. Bourne, Jr., General Services Administration, for the agencies. Sharon L. Larkin, Esq., and Guy. R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of a blanket purchase agreement based on a competition among Federal Supply Schedule (FSS) vendors using Federal Acquisition Regulation Part 8 procedures, is improper, where awardee's quotation contains services not identified on its FSS contract.

DECISION

American Systems Consulting, Inc. (ASCI) protests the award of blanket purchase agreement (BPA) No. HC1013-04-A-5001 to ManTech Advanced Systems International under a request for quotations (RFQ) issued by the Defense Information Technology Contracting Organization (DITCO) for systems applications and support for the Defense Commissary Agency (DCA). The BPA resulted from a competition conducted among Federal Supply Schedule (FSS) vendors using Federal Acquisition Regulation (FAR) Part 8 procedures. ASCI contends, among other things, that some of the purchased services are outside the scope of ManTech's FSS contract.

We sustain the protest.

The RFQ sought quotations for software systems engineering support services for three of DCA's business systems¹ and the development of new business systems applications. These systems will be used to support worldwide commissary operations for the Department of Defense. The list of services to be provided are detailed in a performance work statement (PWS) incorporated into the RFQ, and include project management; systems analysis, evaluations, design, development and testing; systems maintenance; software quality assurance; user support (help desk services); systems deployment support; software configuration management; maintenance of on-line documentations; user training; and local support. PWS §§ 1.0, 2.0.

The PWS stated that vendors are required to provide "highly skilled professional personnel" for the accomplishment of these tasks. Id. § 5.0. In this regard, the PWS detailed the job and education requirements for each of the key and other personnel positions, id., and required vendors, in their quotations, to identify the labor category from their FSS contract that "most nearly equat[ed]" to each PWS-defined position. RFQ, Quotation Preparation Instructions, § D.4.b. Offerors were also required to list, for each labor category, their GSA schedule pricing, as well as any discounted hourly rates for this quotation. Id., Table 2.

The RFQ provided for award of a fixed-price BPA for a 1-year phase-in period followed by a base year with four 1-year options, with time-and-material line items for labor and a reimbursable line item for travel. The RFQ stated that award would be made on a best-value basis, considering (in descending order of importance) technical and management capability, present and past performance, and cost/price. RFQ, Evaluation Factors for Award, § 1.a. The price evaluation was to be based on a "discounted life cycle cost" for each proposal, based on the proposed prices and hours listed in the quotation over the entire 6-year contract period.

Both ASCI and ManTech submitted quotations in response to the RFQ under their respective General Services Administration (GSA) Schedule 70 (Information Technology) contracts. The agency held discussions with each vendor, and obtained revised quotations. Both vendors' final quotations were rated "green" or "acceptable" under the technical and management capability factor (although ManTech was rated more favorably in terms of risk²), and "high confidence" under the present and past performance factor; however, ManTech's discounted life-cycle cost of \$16,000,923 was found to be approximately \$8.5 million less than ASCI's

¹ These systems are the DCA Interactive Business System, the Computer Assisted Ordering System, and the Pick Management System.

² ManTech was rated low risk under the technical and management capability factor, whereas ASCI was rated moderate risk.

(which was \$24,540,509).³ Agency Report (AR), Tab 15A, Final Evaluation Report, at 35-36; Tab 15B, Price Analysis Memorandum, at 1. Award was made to ManTech and this protest followed.

ASCI contends that the BPA was improperly awarded to ManTech because it contains services not on ManTech's FSS contract.

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). 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); Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4. 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., *supra*, at 4; OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-5.

ASCI contends that the procurement of services to fill a "user support (customer assistance) manager" position required by the PWS are outside the scope of ManTech's FSS contract. It contends that the labor category that ManTech identified in its quotation to perform this function (task manager) does not include user support functions or have the requisite background and experience to meet the PWS's requirements for user support.

The agency asserts that the RFQ did not require perfectly matched labor categories to those required by the PWS, but only ones that were "most nearly equating" to those categories. In this regard, it asserts that ManTech's FSS task manager position is sufficiently similar to that of the PWS's description for a user support manager so as to justify award. We disagree.

The RFQ requires the selected vendor to provide help desk support to business system users 24 hours a day, 7 days a week. This support may be as simple as resolving "recurring [or] minor problems such as printer jamm[ing]," or may require more complex troubleshooting of "systems' applications, data, interfaces, and systems' environments." Help desk support may also require "senior analysts and technical personnel with development and/or maintenance knowledge and experience on the systems applications, databases, data, interfaces, and system's environment" to resolve system problems. RFQ § 3.5

The user support manager, which will oversee this function, is required to "provide leadership and management of the user support personnel," "create[] the User

³ Both vendors' discounted life-cycle costs were lower than the government's estimate of discounted life cycle costs. See AR at 17.

Support Plan which defines the policies and procedures for providing [24 hours a day, 7 days a week] support for [DCA's business] systems," "manage multiple time sensitive tasks involving end user support," and "be available to provide on-call support." Education and experience requirements for this position are a Master's degree in "Information Technology, Computer Science, Business" and 8 years of relevant experience, or a Bachelor's degree and 10 years of relevant work experience. "The two years of the relevant experience must be in managing a User Support (Help Desk) operation providing around the clock support for more than 100 end users." PWS § 5.6.

As noted above, ManTech's quotation identified a task manager to fill the user support manager position. ManTech's FSS contract describes the task manager position as follows:

Directs all financial management and administrative activities, such as budgeting, manpower and resource planning, and financial reporting. Performs complex evaluation of existing procedures, processes, techniques, model, and/or systems related to the management problems or contractual issues which would require a report and recommends solutions. Develops work breakdown structures, prepares charts, tables, graphs, and diagrams to assist in analyzing problems. Provides daily supervision and direction to staff. Defines and directs technical specifications and tasks to be performed by team members, defines target dates of tasks and subtasks. Provides guidance and assistance in coordinating output and ensuring the technical adequacy of the end product.

ManTech's FSS Contract at 22.

The task manager position included in ManTech's FSS contract has a minimum of 6 years working experience, with at least 3 years "specialized" experience in "preparation and analysis of financial statements, development of complex project schedules and similar activities," and "general" experience in "accounting or management activities." The minimum education requirement is a Bachelor's degree in "Computer Science, Information Systems, Engineering, Business, Accounting, or other related scientific or technical discipline" with 6 years of relevant experience; a Master's degree with 4 years of general experience of which at least 2 years is specialized; or no degree if the individual has 10 years of general experience of which at least 8 years is specialized. Id.

Based on our review and comparison of the PWS with ManTech's FSS contract, we find that the user support manager services are outside the scope of ManTech's FSS contract. We reach this conclusion because the RFQ required ManTech to identify the labor category from its FSS contract that "most nearly equat[ed]" to each PWS-defined position, and the task manager labor category identified by ManTech

does not appear to match the user support manager position defined in the PWS. For example, the task manager description does not include performing the help desk or systems support services described in the PWS. Rather, the task manager position is focused on financial management activities, with some general administrative management duties. The task manager experience level also does not include at least 2 years of help desk experience, as is required for the user support manager position. Since ManTech's "most nearly equat[ing]" labor category (*i.e.*, task manager) does not perform the services required for the user support manager, and neither the agency nor ManTech argue that a more closely related labor category exists on ManTech's FSS contract to fill the position, it appears that ManTech's quoted services are outside the scope of its FSS contract.⁴

The agency argues, however, that the matching of FSS labor categories to the PWS requirements ignores the actual personnel qualifications identified by ManTech in its quotation for the various positions. We think this argument misses the point; when concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is not whether the vendor is willing to provide the services that the agency is seeking, but whether those services are actually included in the vendor's FSS contract as reasonably interpreted. If the quoted services are not listed on the vendor's FSS contract, they cannot be purchased using FAR Part 8 procedures, but instead must be purchased using competitive procedures. Symplicity Corp., *supra*, at 4-5. The fact that a vendor may state in its quotation that it is willing, and in fact is able, to provide such services does not obviate the agency's obligation to make certain that all of those services are within the scope of the vendor's FSS contract.⁵ Where a portion of the services are outside the scope of that contract, as is the case here, then the agency must use competitive procedures to procure them.⁶

⁴ In response to our request, the General Services Administration (GSA) submitted comments on the protest. Taking a position not advanced by DITCO, GSA argues that "there are several labor categories [in Mantech's FSS contract] which have the level of expertise required to provide 'user support' as required by DITCO." However, GSA does not identify any specific labor category that includes the user support manager services within its scope and, in any event, ManTech proposed to fill this position using the task manager position.

⁵ Similarly, the RFQ's reference to "nearly equating" labor categories, which the agency argues contemplates some variation in the labor categories between the PWS and vendors' quotations, does not permit the agency to use FSS procedures to purchase services that are not on a vendor's FSS contract.

⁶ ASCI raises a number of other examples of "mismatched" labor categories, arguing that ManTech identified labor categories to fill the program manger, technical manager, configuration management manager, information assurance manager, and documentation/training manager positions that are not the best matched labor

(continued...)

We recommend that the agency evaluate quotations to determine whether services identified in vendors' quotations appear in their respective FSS contracts. The agency may also wish to reopen discussions and seek revised quotations. We recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys fees. 4 C.F.R. § 21.8(d)(1) (2004). The protest should submit its certified claim for these costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.⁷

Anthony H. Gamboa
General Counsel

(...continued)

categories to the PWS positions, and that other labor categories in its FSS are better suited to these positions. This, ASCI argues, violated the RFQ requirement that vendors identify their "most nearly equating" labor category to the PWS positions, and required the agency to downgrade ManTech's evaluation ratings. In light of our recommendation above, we need not address this issue, but recommend that the agency consider ASCI's arguments when reevaluating quotations. DITCO may also wish to revise its RFQ to clarify how quotations will be evaluated in this regard.

⁷ ASCI raised a number of other objections to the agency's evaluation of ManTech's quotation which we need not address, given our recommendation that the agency reevaluate quotations.