U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

Decision

Matter of: Trademasters Service, Inc.

File: B-418522

Date: June 3, 2020

Timothy F. Valley, Esq., Jason A. Blindauer, Esq., and Meghan F. Leemon, Esq., Piliero Mazza PLLC, for the protester.
John Klein, Esq., and Mark Hagedorn, Esq., Small Business Administration; and Robert Notigan, Esq., General Services Administration, for the agencies.
Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency engaged in improper acquisition planning is denied where the record shows that the agency's planning was reasonable and in accordance with relevant regulatory requirements.

2. Protest that the agency failed to obtain concurrence from the Small Business Administration to release requirement from the 8(a) program is dismissed because the protester is not an interested party to protest the agency's action.

3. Protest that the solicitation deprives vendors of the ability to compete intelligently and fairly is denied where the record shows that the solicitation is drafted in a fashion that enables vendors to intelligently prepare their proposals and sufficiently free from ambiguity so that vendors may compete on a common basis.

DECISION

Trademasters Service, Inc., of Lorton, Virginia, protests the terms of request for quotation (RFQ) No. 47PD0120Q0003, issued by the General Services Administration (GSA), Public Buildings Service, for facilities maintenance services. Trademasters argues that the agency engaged in improper acquisition planning, and challenges various aspects of the solicitation.

We deny the protest.

BACKGROUND

The RFQ, issued on November 26, 2019, sought quotations from holders of GSA's Federal Supply Schedule (FSS) No. 03FAC (Facilities Maintenance and Management) contracts, to establish a blanket purchase agreement (BPA) for facilities maintenance services under the rules prescribed in Federal Acquisition Regulation (FAR) 8.405-3. Agency Report (AR), Tab 6, RFQ, at 4.[1] Specifically, the RFQ calls for the provision of facilities engineering, operation and maintenance, and related services for five federal buildings located in Washington, District of Columbia, over the term of one base year and nine, 1-year option periods. *Id.* at 4. The procurement is to be conducted on a full and open, unrestricted basis. *Id.*

The solicitation contemplates the issuance of a single BPA on a best-value tradeoff basis, considering the following non-price factors, listed in descending order of importance: management plan, prior experience, and past performance. *Id.* at 10. The non-price factors, when combined, are more important than price. *Id.* Under the management plan factor, quotations are to be evaluated based on management approach and technical approach. *Id.* at 11-14.

According to the agency, historically, GSA has procured only mechanical maintenance services under its facilities management program, which involved providing detailed guidance on how to accomplish maintenance tasks, strict adherence with procedural guidelines, and government inspection to ensure compliance with the terms of the contract. *Id.* at 72. The objective of this BPA, however, is to employ a different approach, procuring "a holistic and integrated complete facilities management program." *Id.* The agency states that this approach "includes not only the accomplishment of predefined tasks, but also the technical, managerial and decision making expertise of a Contractor to jointly manage the assets, tenants, and projects in partnership with GSA over the long term." *Id.*

The record shows that Trademasters is the incumbent on the current operations and maintenance services contract for the five buildings involved in this procurement. AR, Tab 1, Trademasters Contract, at 1. The current contract (GS-11-P-17-DC-D-0001) was awarded to Trademasters in 2017 as a competitive small business set-aside through the Small Business Administration's (SBA) 8(a) Business Development program.[2] *Id.* at 4-15, 28-29; *see also* Contracting Officer's Statement at 3. The

[1] Unless otherwise noted, all citations to the record are to the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the agency.

[2] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by awarding subcontracts to socially and economically disadvantaged small business concerns. FAR 19.800. This program is commonly referred to as the 8(a) program.

contract had a term of one base period and up to four 1-year option periods. The protester is currently performing in the second option period of that contract, which ends on July 31, 2020; two option periods remain on that contract. Protest at 3.

The closing time and date for the solicitation was established as 4:00 p.m., February 28, 2020. Contracting Officer's Statement at 2; RFQ at 60. Trademasters submitted this protest on February 28, prior to the time set for receipt of initial quotations. Protest at 2

DISCUSSION

Trademasters protests the agency's decision to issue the current solicitation, arguing that the agency engaged in improper acquisition planning. Protest at 11-12. The protester also argues that the RFQ deprives vendors of the ability to compete intelligently and fairly because the solicitation is missing material information, is unnecessarily confusing and duplicative, and impermissibly seeks to shift all the risk of the missing and confusing information to the contractor. *Id.* at 12-19. Although we do not specifically address all of Trademasters's arguments, we have fully considered all of them and conclude that none furnishes a basis on which sustain the protest.

Challenge to Acquisition Planning

Trademasters first argues that GSA's acquisition planning was improper because the agency either ignored or overlooked "the use of pre-existing contracts . . . to fulfill the requirement." *Id.* at 11 (emphasis omitted). The protester asserts that there is no need for the BPA because GSA is already receiving the services contemplated by the BPA under its contract with Trademasters. *Id.* According to Trademasters, "the RFQ is a total waste of resources and tax dollars and represents a failure on the part of GSA to conduct proper acquisition planning under FAR Part 7."[3] *Id.*

The agency responds that it complied with the acquisition planning requirements of FAR part 7, and requests that we deny this allegation. Memorandum of Law (MOL) at 1. Moreover, the agency argues that it considered and rejected the use of Trademasters's current contract to perform the work in favor of a new acquisition strategy, but in any event, the agency asserts the decision whether to exercise an option on the protester's contract is a matter of contract administration, which is outside the scope of our protest function. *Id.* at 2. We agree.

First, we have consistently stated that contract options are exercised solely at the discretion of the government, and a contractor cannot compel an agency to exercise an option in its contract. *U.S. Hotel Sourcing, LLC*, B-406726, Aug. 13, 2012, 2012 CPD

[3] Within its challenge to the agency's acquisition planning, the protester also argues that it "appears questionable . . . that GSA sought SBA's permission . . . before removing the procurement out of the 8(a) Program to compete it on an unrestricted basis." Protest at 11. We address this allegation separately below.

¶ 232 at 2-3; *California Shorthand Reporting*, B-236680, Dec. 22, 1989, 89-2 CPD ¶ 584 at 2. More to the point, as GSA asserts, the agency's decision to exercise (or not exercise) the option of a contract concerns a matter of contract administration, which is outside the scope of our bid protest function. 4 C.F.R. § 21.5(a); *ServeFed, Inc.*, B-417708, Sept. 18, 2019, 2019 CPD ¶ 326 at 2 n.3 (dismissing challenge of the agency's decision not to exercise an option period under protester's existing 8(a) contract). Next, to the extent that the protester challenges the reasonableness of the agency acquisition methodology, as we have consistently found, contracting agencies have broad discretion to determine their needs and the best way to meet them. *Crewzers Fire Crew Transport, Inc.*, B-402530, B-402530.2, May 17, 2010, 2010 CPD ¶ 117 at 3; *USA Fabrics, Inc.*, B-295737, B-295737.2, Apr. 19, 2005, 2005 CPD ¶ 82 at 4.

Here, the agency explains that it decided to undertake the current acquisition to address known issues with the incumbent contract. Contracting Officer's Statement at 3. In this regard, the agency asserts that the current contract was awarded on a lowest-price, technically acceptable basis, which provided "a minimum level of service as opposed to encouraging innovative, beneficial solutions." *Id.* According to the agency, "[a] major element of the new strategy would be to implement common strategies for operating and maintaining buildings." *Id.* Additionally, "[n]ew contracts would require the contractor to participate and partner with the Government in the initiative of obtaining high performance and sustainable operations." *Id.*; *accord* AR, Tab 3, Acquisition Plan, at 4-9 (describing agency's rationale for new acquisition methodology).

Our review of the record does not provide a basis to question the agency's acquisition planning. Here, the record shows that the agency considered different acquisition methods, including use of the incumbent contract held by Trademasters. Due to limitations with that contract, as discussed above, and a desire to pursue a new acquisition strategy to meet its needs, the agency decided to issue the solicitation incorporating new requirements, and utilize a best-value tradeoff methodology to issue the BPA. Given the agency's stated rationale we conclude that its decision to not utilize the existing contract to meet its future needs, and instead pursue a new acquisition strategy, was unobjectionable.

Challenge To Procurement Outside of the 8(a) Program

Trademasters also questions whether GSA sought and obtained concurrence from the SBA to release the requirements from the 8(a) program in accordance with SBA's regulations at 13 C.F.R. § 124.504(d).[4] Protest at 11. In essence, the protester alleges the agency improperly removed the existing requirement from the 8(a) program. The agency responds, arguing that the procurement is a new requirement and is not part of

[4] Section 124.504(d)(1) of 13 C.F.R. states, in pertinent part, "where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) BD [business development] program unless SBA agrees to release it for non-8(a) competition."

the 8(a) program, or, alternatively, that the provisions of 13 C.F.R. § 124.504(d) do not apply to procurements utilizing the FSS. MOL at 4. We invited the SBA to provide comments in this protest, which they did. Prior to receipt of the SBA's comments, however, the agency submitted a supplemental filing, informing our Office, for the first time, that Trademasters had exited the 8(a) program in 2018. Supp. Agency Report at 1. In that submission, the agency argues that since the protester "was not an 8(a) at the time the solicitation was issued, or when the protest was filed, its 8(a) claim should be dismissed." *Id.* We asked the parties to address the issue of whether Trademasters was an interested party to challenge the agency's decision to remove the requirement without concurrence from the SBA, given that the firm was no longer a participant in the SBA's 8(a) program.

The protester argues that it is an interested party for three reasons. First, Trademasters contends that the RFQ, as issued, is a full and open, unrestricted solicitation, and thus, the firm's 8(a) status "is completely irrelevant for the instant RFQ, as it is not set aside for 8(a) participants." Protester's Response to Request for Additional Briefing at 2. Second, the protester argues that it is an interested party because the firm "continues to be an 8(a) firm for purposes of its incumbent contract," notwithstanding the fact that the firm has graduated from the 8(a) program, and thus GSA could continue to exercise options on that contract.[5] *Id.* Finally, Trademasters contends that it is an interested party because it will suffer economic injury "if GSA proceeds with its duplicative procurement." *Id.*

The SBA urges us to decide this issue primarily because it believes the procurement community would substantially benefit from additional guidance about whether GSA and other agencies may migrate work from the 8(a) program to the FSS without going through the 8(a) release process. SBA Response to Request for Additional Briefing at 1. GSA argues that since Trademasters "could not receive an award if its Protest was sustained on 8(a) grounds, it is not an interested party and its 8(a) protest must be dismissed." Agency Response to Request for Additional Briefing at 3. We agree with GSA that Trademasters is not an interested party to challenge the agency's alleged removal of the requirement from the 8(a) program.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or the relief sought by the protester,

[5] In support of this position, Trademasters cites to SBA's regulations which states, in pertinent part: "Generally, a concern that is an eligible 8(a) Participant at the time of initial offer or response, which includes price, for an 8(a) contract, including a Multiple Award Contract, is considered an 8(a) Participant throughout the life of that contract." 13 C.F.R. § 124.521(e)(1).

and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. *Id.*

In support of its argument, GSA relies on our decision in *Signature Consulting Group, LLC*, B-416570, Oct. 18, 2018, 2018 CPD ¶ 375. In that decision, we dismissed a protester's allegation that an agency's issuance of a solicitation outside of the SBA's 8(a) program violated procurement regulations, specifically, 13 C.F.R. § 124.504(d)(1). We found that because the protester had graduated from the 8(a) program, and was no longer an 8(a) contractor eligible to receive contracts under the 8(a) program, the protester was not an interested party to challenge the agency's decision not to include a requirement in the 8(a) program. *Id.* at 5 *citing Interoperability Clearinghouse*, B-416001, Mar. 12, 2018, 2018 CPD ¶ 108 at 2.

Comparable to the facts in *Signature Consulting*, the record here shows that Trademasters has graduated from the 8(a) program and would not be eligible to receive or compete for any follow-on requirements under the 8(a) program. Consequently, even if the protester is correct and the requirement was improperly removed from the 8(a) program, Trademasters, as a graduate of the 8(a) program, would not be eligible for an award if the requirement were to remain in the 8(a) program.[6] *Signature Consulting*, *supra* at 5.

Next, Trademasters contends that it is an interested party because if the agency exercises the option under its existing 8(a) contract, Trademasters would be eligible to perform, notwithstanding the fact that it has graduated from the 8(a) program. However, as discussed above, such a challenge to the agency's decision to exercise (or not exercise) the option of a contract concerns a matter of contract administration, which is outside the scope of our bid protest function. 4 C.F.R. § 21.5(a); *ServeFed, Inc.*, *supra*.

Finally, the protester asserts that it is an interested party because it will suffer economic injury if GSA proceeds with this procurement. However, the economic injury Trademasters refers to (*i.e.*, the agency's decision to not exercise an option on its existing contract) is, as discussed above, not a matter we will consider. *Id.*

---

[6] Similarly, Trademasters attempts to argue, in general terms, that it is an interested party within the definition of our Bid Protest Regulations, because it is an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." 4 C.F.R. § 21.0(a)(1). Although, the protester is correct that it is an interested party to otherwise challenge the terms of the solicitation, such an argument misses the mark in regards to its allegation that GSA improperly removed the requirement from the 8(a) program. To the contrary, if our Office were to sustain the protester's 8(a) challenge, the protester's direct economic interests would be adversely affected as Trademasters would not be eligible to compete for the follow-on requirement under the SBA's 8(a) program.

Accordingly, because Trademasters is not an interested party to challenge the agency's decision to procure the requirement outside of the SBA's 8(a) program, this allegation is dismissed.[7] *Signature Consulting*, *supra* at 4-5.

Challenge to Terms of the Solicitation

Trademasters next challenges the terms of the solicitation arguing that it deprives vendors of the ability to compete intelligently and fairly because the solicitation is missing material information, is unnecessarily confusing and duplicative, and impermissibly seeks to shift all the risk of the missing and confusing information to the contractor. Protest at 12-19. In support of this allegation, the protester points to various "informational deficiencies" in the solicitation, and to several instances where the firm argues the solicitation provides insufficient information to permit a vendor to intelligently estimate its price, or devise an effective management plan. *Id.* at 13-17.

The agency responds that while specifications must be sufficiently clear to permit competition on an intelligent and equal basis, "there is no requirement that a solicitation be so detailed as to eliminate all performance uncertainties." MOL at 2. The agency also asserts that "[s]ome risk is inherent in most types of contracts, and offerors are expected, when computing their prices, to account for such risk." *Id.* at 2-3. Moreover, while recognizing that "with a project spanning five buildings, there is bound to be some incomplete information[,]" the agency argues that "[t]hose minimal uncertainties do not rise to the level of material deficiencies." *Id.* at 3. Finally, the agency points to the fact that it received [DELETED] quotations in response to its RFQ, presumably as evidence that the solicitation provides sufficient information for vendors to compete intelligently. *Id.* We are provided no basis to question the adequacy of the solicitation in this regard.

As a general rule, a solicitation must be drafted in a fashion that enables vendors to intelligently prepare their quotations and must be sufficiently free from ambiguity so that vendors may compete on a common basis. *ACME Endeavors, Inc.*, B-417455, June 25, 2019, 2019 CPD ¶ 224 at 3. However, there is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate

[7] We acknowledge SBA's request that we decide this issue to provide guidance to the procurement community, however, because Trademasters is not an interested party to make such a challenge, our office's consideration of the issue would be purely academic. In this regard, our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Honeywell Tech. Solutions, Inc.*, B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. We will not consider a protest where the issue presented has no practical consequences with regard to an existing federal government procurement, and thus is of purely academic interest. We only consider protests against specific procurement actions and will not render to a protester what would be, in effect, an advisory decision. *Ferris Optical*, B-403012.2, B-403012.3 Oct. 21, 2010, 2010 CPD ¶ 265 at 2.

all risk or remove every uncertainty from the mind of every prospective vendor; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for vendors to compete intelligently and on equal terms. *Phoenix Envtl. Design, Inc.*, B-411746, Oct. 14, 2015, 2015 CPD ¶ 319 at 3.

Trademasters argues, for example, that "the RFQ fails to give [vendors] a complete inventory of the equipment to be maintained for the five buildings, and does not provide information on the manufacturer, model, age, condition, applicable warranties, manufacturer standards, or maintenance requirements for much of the equipment." Protest at 12-13. The agency responds that it "provided full access to a file identified in the RFQ as 'Bidders Library' with detailed information from each building as to National Computerized Maintenance Management System . . . as well as available inventory lists." Contracting Officer's Statement at 10. Furthermore, the agency explains that it had responded to all pre-bid requests for information (RFI) from vendors, "addressing [vendor] questions wherever possible." *Id.* In its comments, the protester argues that the solicitation and the documents provided by the agency do not provide "the necessary details [as] to what will need to be repaired or replaced, when, and how much effort will be involved," such that vendors are prevented from "composing intelligent quotes."[8] Protester's Comments at 13-14.

Our review of the record, however, does not support Trademasters's contention that the information provided to vendors in the solicitation was not sufficient for vendors to compete intelligently. Indeed, the record reveals that the agency provided various files in the agency report, including inventory lists, maintenance sheets, and records for the buildings that are the subject of this procurement, as well as the question and answer exchanges conducted with prospective vendors. *See generally* AR, Tab 12, Question and Answer; Tab 15, Agency Supplemental Exhibits. The record also reflects that vendors had pre-bid site access to "tour the mechanical equipment room and ask questions." Supp. MOL at 9. Given that vendors had an opportunity to conduct a site visit and submit RFIs for clarifications regarding the solicitations and its requirements, we do not find persuasive the protester's arguments that the solicitation was "missing material information" to a degree that prevented vendors from competing intelligently. *See generally* RFQ; AR, Tab 12, Question and Answer. Although certainly not dispositive, the fact that [DELETED] vendors were able to submit quotations does weigh

[8] Trademasters also points to other instances where the firm asserts the Bidder's Library is missing material information, such as: historical data for escorting investigatory personnel; technical details for security equipment to be maintained under the BPA; maintenance details on the dimensions or volume of kitchen hoods at each building; diagrams, schemata, or descriptions of closed heating systems in each building; and details of operations periods for closed chilled systems in each building. Protester's Comments at 15-16.

against Trademasters's assertion that the solicitation was so defective as to prevent vendors from fairly competing.

As discussed above, there is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective vendor. *Phoenix Envtl. Design, Inc.*, *supra*. Such perfection, while desirable, is manifestly impractical in some procurements, and the mere presence of a risk factor does not render a solicitation improper. *Service Technicians, Inc.*, B-249329.2, Nov. 12, 1992, 92-2 CPD ¶ 342 at 2. Based on our review of the record, we conclude that the information provided by GSA, in this regard, is sufficiently detailed to permit vendors to intelligently prepare their quotations and compete on a common basis.

The protest is denied.

Thomas H. Armstrong
General Counsel