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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: FitNet Purchasing Alliance

File: B-310031

Date: September 21, 2007

Raul Espinosa for the protester.

Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Philip Kauffman, Esq.,
Department of Veterans Affairs, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging the cancellation of a reverse auction solicitation, and the decision to reissue the solicitation limited to Federal Supply Schedule vendors is dismissed in part, and denied in part, where the record shows that the protester was not in line for award of the canceled solicitation, and is therefore not an interested party to challenge the cancellation decision, and where the agency acted properly in reissuing the solicitation limited to Federal Supply Schedule vendors.

DECISION

FitNet Purchasing Alliance, a small business, protests the cancellation and reposting of a reverse auction under solicitation No. 213-0220 by the Department of Veterans Affairs (VA) for specific models of Zenith brand hospital-grade 20-inch television sets and Peerless brand mounts, to be delivered to the Bay Pines VA Healthcare System in Florida. FitNet asserts that the cancellation lacked a reasonable basis, and that when the VA subsequently reposted the same requirement, it improperly limited the competition to Federal Supply Schedule (FSS) vendors.

We dismiss the protest in part and deny it in part.

On August 2, 2007, a VA purchasing agent used the FedBid website to commence an electronic reverse auction for 170 televisions and mounts, at a target price of \$97,495. This first version of the reverse auction posting was designated by FedBid

as “Buy No. 44299_01.”¹ The posting listed a closing time of “10:00 EST” on August 7. The purchasing agent explains that he had intended to restrict participation in the reverse auction to FSS vendors. Purchasing Agent’s Statement at 1. Nevertheless, the posting did not reflect that intent; instead the posting stated, in relevant part, as follows:

GSA Schedule Bids Preferred, But Not Required: Sellers may either provide a GSA Schedule or an Open Market bid. If bidding with a GSA Schedule, the requested items must be on that Schedule. The Schedule must either be in the Seller’s name or the Seller must be able to document its ability to act as an agent of a partner’s Schedule. Sellers may offer Open Market items only in accordance with the approved Terms and Conditions of their respective GSA Schedule AND upon approval from the soliciting Contracting Officer.

Request for Dismissal, exh. 1, at 1.

FitNet participated by submitting a total price of \$113,551.50, which it described as an “open market” price.² Id. When the reverse auction closed, the record reflects that at least one other competitor had submitted a lower price than FitNet.

On August 10, the purchasing agent began to review the prices received, starting with the leading “bid” (that is, the lowest-priced quotation), and found that neither it, nor the second-lowest-priced quotation, had been submitted by a vendor under an FSS contract. The purchasing agent states that he then reread the posting, in an effort to confirm that the solicitation had been limited to FSS vendors only, but discovered that he had apparently “inadvertently checked the wrong box” when preparing the posting. Purchasing Agent’s Statement at 1.

¹ FedBid, Inc. is a commercial online procurement services provider that runs a website at FedBid.com, which among other things, hosts reverse auctions. FedBid uses specific terminology to describe its reverse auctions. A procurement conducted through FedBid is referred to as a “buy,” and a participant in the reverse auction is said to submit a “bid.” See FedBid FAQs (available online at www.fedbid.com/buyers/faq/#anchor5). Nevertheless, the parties refer to the reverse auctions at issue here as both buys and requests for quotations, and refer to the competitors’ submissions here as both bids and quotes.

² Both FitNet and the agency refer to an “open market” price submission, in apparent reference to the concepts and procedures described at Federal Acquisition Regulation (FAR) § 8.402(f), which anticipates the addition of items not on the FSS (referred to as “open market items”) to a blanket purchase agreement or individual task or delivery order.

On August 12, the purchasing agent canceled the reverse auction by reposting the requirement with some changes, which FedBid designated as reverse auction "Buy No. 44299_02." Id. In this second version of the posting, the narrative stated that participation in the reverse auction would be limited to FSS vendors only, and that the solicitation would close on August 17 at "14:00 EST." Request for Dismissal, exh. 4, at 1.

On August 14, FitNet inquired why the requirement had been canceled and then reposted. On August 15, FedBid responded that the agency would only allow participation by FSS vendors. This protest followed.

FitNet argues that the VA lacked any valid basis to cancel the first version of the solicitation, and has improperly limited competition by now restricting the new competition to FSS vendors.

With respect to FitNet's protest of the cancellation of the first version of the solicitation, we conclude that FitNet is not an interested party. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (2000 & Supp. IV 2004), only an "interested party" may protest a federal procurement. A protester is not an interested party where it would not be in line for contract award if its protest were to be sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. Here, FitNet did not submit the lowest price in the first reverse auction, and thus, is not an interested party to challenge the cancellation.

With respect to the second reverse auction, the VA argues that it properly limited competition to FSS vendors. In its response, FitNet argues only that any preference for using the FSS program "is both injudicious and unfair." Protester's Response, at 1.³ We disagree. The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3) (2000); FAR § 6.102(d)(3); Tarheel Specialties, Inc., B-298197, B-298197.2, July 17, 2006, 2006 CPD ¶ 140 at 3. Thus, limiting the pool of competition to vendors holding FSS contracts is legally permissible, even if an individual protester may be unable to compete because it does not hold an FSS contract. See Information Ventures, Inc., B-299422, B-299422.2, May 1, 2007, 2007 CPD ¶ 88 at 3 (decision to use FSS program was not evidence of bias against a protester that lacked an FSS contract).

The protest is dismissed in part and denied in part.

Gary L. Kepplinger
General Counsel

³ FitNet makes several arguments in its September 7 response to the agency's dismissal request that it did not raise in its August 15 protest. FitNet's attempt to raise new issues at this point is untimely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2007). Accordingly, our decision addresses only the arguments that FitNet raised in its initial protest.