



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: Altos Federal Group, Inc.

File: B-294120

Date: July 28, 2004

James S. DelSordo, Esq., Halloran & Sage, for the protester.
Paul F. Khoury, Esq., and William J. Grimaldi, Esq., Wiley Rein & Fielding, for InteliStaf Healthcare, Inc., an intervenor.
Dennis Foley, Esq., Department of Veterans Affairs, 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. Where request for quotations for nursing services announced agency's intention to select a Federal Supply Schedule (FSS) contractor, vendors were effectively placed on notice that agency intended to acquire all services using FSS procedures and hence that all services were required to be within the scope of the vendor's (or its subcontractors') FSS contract(s).
 2. Where protester failed to specify in its quotation that it would be using a subcontractor to provide services not included in its own FSS contract, agency properly rejected quotation on the basis that protester's FSS contract did not include all requested services.
-

DECISION

Altos Federal Group, Inc. protests the rejection of its quotation and the issuance of a task order to InteliStaf Healthcare, Inc., under request for quotations (RFQ) No. 673-90F-04-003A, issued by the Department of Veterans Affairs (VA) for nursing services at the Wilford Hall Medical Treatment Facility, Lackland Air Force Base, San Antonio, Texas.¹ Altos contends that the agency improperly evaluated its quotation on the basis of criteria not set forth in the RFQ.

We deny the protest.

¹ VA conducted the acquisition on behalf of the Air Force.

The RFQ contemplated the issuance of a fixed-price indefinite-delivery/ indefinite-quantity task order to a Federal Supply Schedule (FSS) contractor for a 1-year base period and up to 4 option years. The solicitation schedule identified 35 categories of required nursing services by FSS and special item number (SIN) (e.g., Schedule No. 621, SIN 025c),² description (e.g., RN (General Surgery Inpatient Unit)), estimated full-time equivalent, and estimated hours. Vendors were requested to furnish a unit cost per hour, a total cost, and an overtime rate for each category of services. The RFQ provided for award to the vendor whose quotation was determined most advantageous to the government, price and other factors (consisting of corporate qualifications, risk assessment, personnel, customer service, past performance, and subcontracting) considered.

Thirteen vendors responded to the RFQ. Using the General Services Administration's (GSA) Advantage! website, the contracting officer reviewed each vendor's FSS contract to determine whether it listed all of the nursing service categories identified in the RFQ schedule. Based on his review, the contracting officer divided the quotations into three groups: group one consisted of quotations from vendors who had all of the categories listed on their FSS schedules (there were four quotations in this group); group two consisted of quotations from vendors who did not have all of the required items listed in their FSS contracts, but who "could potentially be considered for multiple awards in the event that a source selection of group one could not be made for a single award at a reasonable price" (there were seven quotations in this group); and group three consisted of vendors who "did not meet the material requirements of the RFQ" (there were two quotations, one of which was Altos's, in this group). Contracting Officer's Narrative Statement at 2. The contracting officer concluded that Altos's quotation did not meet the material requirements of the RFQ because the information available on the GSA Advantage! website indicated that Altos did not have the SINs corresponding to over 75 percent of the required work on its FSS contract. An evaluation panel convened, evaluated the group one quotations, and selected IntelliStaf's quotation. On May 19, the agency notified IntelliStaf of the selection of its quotation, in a total estimated amount of \$53,949,240.

Altos protested to our Office on May 25. The agency initially instructed IntelliStaf to suspend performance on the order, but subsequently overrode the stay of performance and notified IntelliStaf to proceed. On June 1, Altos filed suit in the U.S. Court of Federal Claims seeking reinstatement of the stay. In response to the lawsuit, the contracting officer sought additional information concerning the scope of Altos's FSS contract from the Program Manager of VA's National Acquisition Center and learned that Altos had secured an amendment to its FSS contract in

² All of the items were from Schedule No. 621, Professional Medical Healthcare Services.

November 2003 that added several of the SINs that he had determined to be missing. The contracting officer nonetheless concluded that the additional information would not have altered the outcome of his evaluation because Altos still lacked at least one required SIN, 025h, and thus would not have been included in group one, meaning that its quotation still would not have been considered further.³

Altos contends that the RFQ did not notify vendors that the scope of their FSS contracts would be considered in the evaluation of their quotations, and that evaluation on this basis was therefore inconsistent with the terms of the solicitation. The protester further maintains that the contracting officer's conclusion that it cannot meet the material requirements of the RFQ is unfounded because although it is not currently qualified to provide services under all of the required SINs (*i.e.*, at least one of the SINs is not listed on its FSS contract), it can provide the services for which it is not qualified through a subcontractor.

In response, the agency argues that Altos is not eligible for selection here since its FSS contract does not include all of the required SINs. Regarding the protester's argument that its subcontractor has an FSS contract for the SINs that it is missing, VA notes that "no specific subcontractor relationship is even set forth in Altos' quotation evidencing a vendor with an FSS contract for the SINs that Altos cannot furnish." Agency Report at 5. The agency further argues that even assuming that Altos's quotation had included the services of a subcontractor with an FSS contract covering the SINs not covered by Altos's own FSS contract, this would be of no consequence since an FSS contractor acting as a prime contractor cannot augment its own FSS contract with a subcontractor relationship to furnish items that the prime contractor is not currently authorized to provide.

It is unclear to us whether the thrust of the protester's argument is that the RFQ failed to advise vendors that all solicitation items were to be procured as "FSS buys," and thus that whether or not items were available via FSS contract would be considered in the evaluation process, or that the RFQ failed to advise that all items were required to be included on the vendor's own, as opposed to a subcontractor's, FSS contract, and thus that the scope of the vendor's own FSS contract would be considered in the evaluation process. To the extent that the protester is making the first argument, we disagree. The RFQ announced the agency's intention to award to

³ It is unclear from the record whether Altos's FSS contract, as amended, is missing one or three of the required SINs. In this regard, the contracting officer's "responsiveness determination" worksheet identifies only SIN 025h as missing, Agency Report at Tab G; however, the president of Altos stated, in a declaration filed in the Court of Federal Claims case, that "although we [Altos] are not currently qualified to provide services under SINs 621-025 d, e, and h, we can provide those services through our subcontractor Sterling Medical, Inc." Declaration of President of Altos, June 3, 2004, at 2 (emphasis added).

“an existing Federal Supply Schedule (FSS) contractor,” RFQ at 6, which, we think, placed vendors on notice that it intended to award all items using FSS procedures and hence that all items were required to be within the scope of the vendor’s (or its subcontractors’) FSS contract(s).⁴ See OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-6. In this connection, an agency cannot lawfully use the FSS ordering procedures to order services that are not contained on the vendor’s (or its subcontractors’) schedule contract(s). Symlicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 5.

However, to the extent that the protester is instead arguing that the RFQ failed to advise vendors that only those firms that had all of the required SINS listed on their own, as opposed to their subcontractors’, FSS contracts would be considered for award, and thus that it would have been improper for the agency to distinguish among quotations on that basis, we agree. Contrary to the agency’s argument, an FSS contractor acting as a prime contractor may use a subcontractor to provide services not included within the prime contractor’s FSS contract so long as the services in question are included within the subcontractor’s FSS contract.⁵ See OMNIPLEX World Servs. Corp., *supra*, at 5. This is so because the items on the subcontractor’s FSS contract, like the items on the prime contractor’s FSS contract, were the object of competitive procedures prior to their inclusion on the vendor’s schedule contract. What is not permitted is for a schedule contractor acting as a prime contractor to use a subcontractor to offer services not included in either its own or the subcontractor’s FSS contract since this would mean that it was improperly including non-FSS goods or services in an FSS acquisition. *Id.*

We nonetheless deny Altos’s protest because, as pointed out by the agency, there is no mention in the protester’s quotation that Altos will be subcontracting for performance of the SINS not listed on its own FSS contract or that any of its subcontractors has an FSS contract for the missing item(s). To the extent that the protester intended to use a subcontractor to provide services not included in its own FSS contract, it was incumbent upon it to identify the subcontractor in its quotation

⁴ Where, in contrast, competition under an RFQ is not limited to FSS vendors, there is no requirement that all items be included on the awardee’s FSS contract. Firearms Training Sys., Inc., B-292819.2 *et al.*, Apr. 26, 2004, 2004 CPD ¶ 107 at 9-10.

⁵ While the agency and the intervenor correctly point out that we have previously held that an agency cannot lawfully use the FSS ordering procedures to order services that are not contained on the vendor’s schedule contract, citing Symlicity Corp., *supra*, and The CDM Group, Inc., B-291304.2, Dec. 23, 2002, 2002 CPD ¶ 221 at 3, those cases did not involve subcontractors with schedule contracts; thus we did not address the lawfulness of an agency using FSS procedures to order services that are not contained on the vendor’s schedule contract but are contained on a proposed subcontractor’s schedule contract.

so that the agency could confirm that items missing from the protester's FSS contract were included on the subcontractor's schedule contract. The agency cannot be faulted for failing to consider in its evaluation information that was not included in Altos's quotation. In this regard, it is well-established that a firm runs the risk of not being selected for award if it fails to submit an adequately written quotation. Northwest Mgmt., Inc., B-277503, Oct. 20, 1997, 97-2 CPD ¶ 108 at 5.

The protest is denied.

Anthony H. Gamboa
General Counsel