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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: The CDM Group, Inc.

File: B-291304.2

Date: December 23, 2002

Kathryn Herron-Venancio for the protester.
Capt. Peter G. Hartman and Capt. Karri L. Garrett, Department of the Army, and
Thedlus L. Thompson, Esq., General Services Administration, for the agencies.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an agency solicited a requirement under the Federal Supply Schedule (FSS) program, it properly rejected a quote from a vendor that did not possess a FSS contract covering the solicited requirement.

DECISION

The CDM Group, Inc. protests the rejection of its quotation under request for quotations (RFQ) No. DAHA90-02-T-0023, issued by the National Guard Bureau for assessment services for the Youth ChalleNGe Program.

We deny the protest.

In 1993, Congress authorized the National Guard to conduct a National Guard Civilian Youth Opportunities Program (Youth ChalleNGe Program). Under the program, the National Guard provides military training, as well as experience with community service and conservation projects, to youth who failed to graduate from high school. The mission of the program is to intervene in the lives of at-risk youth between the ages of 16 and 18 years, and produce program graduates with the values, skill, education and self-discipline to succeed as adults. The National Guard has established 31 programs in 26 states. As part of the program, Congress mandated an assessment of the program by an independent evaluator who would report annually on the program outcomes and impacts.

To satisfy this purpose, the National Guard issued the RFQ on July 31, 2002, seeking fixed-price quotes from vendors with Federal Supply Schedule (FSS) contracts to

assess the ChalleNGe program at all 31 sites. The cover letter to the RFQ (at 2) stated:

The Contracting Office intends to award one, five (5) year contract (base year with four option years) according to the applicable contractor's applicable GSA [General Services Administration FSS]. Please be sure to include a copy of your applicable GSA schedule with your proposal.

The RFQ's statement of work (SOW) described the work under 13 specific tasks, for example, designing an assessment and data collection plan, collecting data on program participants, providing internal management reports, and making operational assessments of the sites. RFQ at 7-8. The SOW also identified certain personnel that were necessary to perform the contract and their required qualifications; for example, the project manager was required to have a "Masters degree, and preferably a Doctoral level degree, in the field of Education or the Social Sciences, and at least 10 years program evaluation experience, five of which must have been with programs involving at-risk youth or applicable related experience"; "evaluators" were required to have a "Master's degree in the field of Education or the Social Sciences or applicable related experience"; and at least one of the individuals assigned to assess the resource management area was required to be a Certified Public Accountant. RFQ at 10, amend. 0001 at 4.

Amendment 0001 to the RFQ (at 3) instructed:

[t]he RFQ indicated the quotes should be based on the contractors' applicable GSA FSS. The labor categories and rates proposed will be used for evaluation of the total proposed for the base period and option years. Evaluation on these items will include a technical evaluation of the categories proposed to help determine the contractor's understanding of the requirement, as well as the evaluation of costs for a cost reasonableness determination. This is a request for quote, following FAR [Federal Acquisition Regulation] [Sub]part 8.4 (and applicable supplements). As such, offerors must have an applicable GSA FSS in effect at the time of their quote. It is the responsibility of the offeror to determine if the work required by the RFQ may be accomplished through their FSS [contract].¹

¹ We find no merit to the protester's contention that the procurement was misleading because the RFQ did not identify a specific FSS. The terms of the RFQ clearly placed the onus on the vendors of assessing whether their FSS contract(s) would meet the RFQ requirements.

The National Guard received several quotes, including CDM's, in response to the RFQ. CDM submitted its quote based on an FSS contract it holds for marketing, media, and public information services, Federal Supply Classification Group 738, Part I, Special Item Number 738-2, Web Site Design and Maintenance Services. Under this FSS contract, CDM can "create or enhance existing web-sites, develop secure web-based collaborative work environments and transaction systems, and provide related engineering services for any Federal agency without further competition." The labor categories included under this FSS contract were project directors/senior analysts, webmasters, web application programmers, telecommunications specialists, programmer/analysts, librarians, writers, editors, graphic artists/illustrators, and administrative support. See Agency Report, Tab 10, GSA Advantage Web Page Description of CDM's FSS Contract. CDM's quote was based on various labor categories not reflected in its FSS contract, including contract manager, project manager, senior scientists, research assistants, research analysts, a certified public accountant, and senior analysts and management assessors.

Since CDM's quote was based upon labor categories not reflected in its FSS contract, the National Guard sought the advice of the General Services Administration (GSA) regarding the propriety of CDM utilizing its FSS contract to meet the RFQ's requirements. GSA's advice was "CDM . . . cannot offer you services quoted against their GSA contract if those items are not under their contract" unless the contract was modified to include those items. Agency Report, Tab 13E, E-Mail from GSA to the National Guard Bureau. Based on this advice, the National Guard rejected CDM's quote. This protest followed.

CDM argues that its FSS contract was an appropriate vehicle to perform the contract because it offered to meet the RFQ requirements utilizing a "web-based design."

When a contracting agency elects to fulfill its requirements under the GSA FSS program, it may limit its consideration of which solution meets the need of the government at the lowest overall cost to those goods and services included on the FSS; it need not consider quotes for items not included on FSS contracts. Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 4. An agency cannot properly select an FSS vendor for an order of items on the vendor's schedule and then include in the order items not included in that vendor's FSS contract where, as here, the non-FSS items are priced above the micro-purchase threshold. T-L-C Sys., B-285687.2, Sept. 29, 2000, 2000 CPD ¶ 166 at 4.

Because the terms of the RFQ limited the procurement to those vendors with FSS contracts capable of meeting the RFQ requirements, CDM's quote was properly rejected. Many of the labor categories proposed in CDM's quote in no way match or reasonably relate to those categories covered by its FSS contract and the work contemplated of these personnel does not coincide with the scope of its FSS contract for web site design. Further, as GSA advises in its report on this protest, "the services required by the [RFQ's] SOW . . . are not similar to those awarded under

CDM's [FSS] contract" and "CDM agreed that this contract shall only be used for the services [listed in the contract]." GSA Report at 2.

CDM argues that its FSS contract should be applicable to this RFQ because its approach to meeting the requirement involved "creating or enhancing" a web site. However, the fundamental purpose of the RFQ was not to procure a vendor to establish or enhance a web site, but instead was to obtain a vendor to assess the agency's ChalleNGe programs. Even accepting that the requirement could be partially met through a web-based approach, as CDM asserts was incorporated in its quote, the fact remains that CDM's quote was based on providing personnel under labor categories not contained in its FSS contract. Moreover, because the record established that what CDM was offering at its fixed price was not within the scope of its FSS contract, we find meritless CDM's argument that the RFQ's request for a fixed-price quote meant that CDM's quote was not limited to the labor categories listed in its GSA FSS contract and rendered irrelevant the labor categories listed in its quote that formed the basis for its fixed price. Thus, the agency properly rejected CDM's quote.

The protest is denied.

Anthony H. Gamboa
General Counsel