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

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Decision

Matter of: Deco Security Services

File: B-401024

Date: April 22, 2009

Mark R. Gleeman, Esq., Winthrop & Weinstine, PA, for the protester.
Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Thompson Coburn LLP, for Paragon Systems, Inc., the intervenor.
Jennifer Longmeyer-Wood, Esq., Department of Homeland Security, Immigration and Customs Enforcement, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a procurement for the issuance of a blanket purchase agreement (BPA) under Federal Acquisition Regulation subpart 8.4 procedures for security guard services, protest that the ordering agency failed to evaluate awardee's low fixed price to determine whether the awardee had quoted sufficient relief services is denied, where the solicitation provided that the contractor's plan for providing relief would be provided after issuance of the BPA and thus would not be evaluated.

DECISION

Deco Security Services of Champlin, Minnesota, protests the issuance of a blanket purchase agreement (BPA) to Paragon Systems, Inc. of Chantilly, Virginia, under request for quotations (RFQ) No. HSCEE3-08-Q-0003, issued by the Federal Protective Service, Immigration and Customs Enforcement, Department of Homeland Security (DHS), for armed security guard services in the Commonwealth of Virginia. Deco complains that Paragon's proposed unit prices are too low to perform relief guard services.

We deny the protest.

The RFQ provided for the establishment of a fixed-unit-price BPA with a 1-year base period and four additional 1-year ordering periods for management, supervision, personnel, materials, supplies and equipment to provide security guard services at federally-owned and leased facilities protected by the Federal Protective Service in Richmond, Roanoke, and Norfolk, Virginia. Vendors were informed that the

procurement was being conducted under Federal Acquisition Regulation (FAR) subpart 8.4, and that it was limited to vendors holding Federal Supply Schedule (FSS) contracts under Schedule 084, Law Enforcement and Security Solutions. RFQ at 1. The RFQ also provided that only Department of Labor category Guard II security guards could be used to perform these services. Id. at 21.

The RFQ stated that quotations would be evaluated on the basis of price and three technical factors (listed in descending order of importance): past performance, management approach, and socio-economic participation. The non-price factors, when combined, were stated to be significantly more important than price. Regarding price, vendors were instructed to submit the following:

Using the price quote worksheet/schedules . . . contractors are required to submit fixed hourly rates for each line item listed for each proposed ordering period. Also, the contractor should provide a detailed breakdown of its proposed hourly rate. The vendor's hourly rate shall be inclusive of all the vendor's direct costs, indirect costs and profit and include all costs associated with providing the services described in the Statement of Work (e.g. relief, training, vacation, sick time, etc) and the Post Exhibit.

RFQ at 3.

Vendors were informed that proposed unit prices would be evaluated by multiplying the unit price against a specified amount of hours. Thus, for example, under contract line item number (CLIN) 1, the base year, a vendor's proposed hourly rate would be multiplied by 300,000 hours.¹ The RFQ also stated that prices would be evaluated for reasonableness.²

One of the costs that vendors were to include in their fixed-hourly-rates was for "relief."³ Relief is not defined by the solicitation, which states only that "relief and breaks will be in accordance with Department of Labor, State and Federal regulations. Relief plan should be addressed in the transition plan." See RFQ amend. 2, question/answer 4. In this regard, although the RFQ provided a wage determination and the incumbent contractor's (Deco's) collective bargaining agreement, neither document discussed relief or breaks. See, *i.e.*, Collective Bargaining Agreement. The transition plan, in which vendors would describe how

¹ The RFQ stated that these hours were for evaluation purposes only.

² The RFQ did not provide for a price realism analysis.

³ As used by the parties, relief appears to refer to the services provided by a guard when relieving another guard who is taking a break.

the contractor would account for relief and breaks, was to be provided to the agency 5 days after issuance of the BPA. RFQ at 6.

The agency received 11 quotations in response to the RFQ, including Deco's and Paragon's. Both vendors accounted for relief in their hourly rates. Deco's quotation stated that, "[b]ased on our experience with the requirements of this contract, DECO will provide [DELETED] of the productive hours in relief." Deco Proposal, § C.3. The protester's breakdown of its hourly rates included a [DELETED] percent factor for relief. The breakdown of Paragon's hourly rates, on the other hand, included only a [DELETED] percent factor for relief.

DHS assigned both Deco's and Paragon's quotations "outstanding" ratings under the past performance and management approach factors. Agency Report (AR), Tab 3, Award Decision Recommendation Memorandum, at 15. Deco's quotation also received a "satisfactory" rating under the socio-economic participation factor because the firm was a section 8(a) firm, and Paragon received a "neutral" rating under this factor because the firm was not a small business. *Id.* Deco's total evaluated price was \$47,704,250, and Paragon's total evaluated price was \$42,388,500. The agency compared all the vendors' total prices to each other and to the government estimate and found that Paragon's price was "fair and reasonable." AR, Tab 4, Price Reasonableness Memorandum, at 7-10, 12. DHS further found that "Paragon and Deco ranked the highest overall and are considered technically equal." *Id.* at 18. The agency concluded that, although Deco offered the additional benefit of being a section 8(a) firm, this benefit did not outweigh Paragon's more than \$5 million price advantage. *Id.* at 19. Award was made to Paragon, and this protest followed.

Deco argues that Paragon's unit price is unreasonably low because Paragon did not include sufficient coverage in its fixed hourly rate to account for relief.⁴ *See* Comments at 5-6. In this regard, Deco contends that DHS was required under FAR § 8.405-2(d) to "consider[] the level of effort and mix of labor proposed to perform a specific task being ordered." The protester asserts that the agency failed to evaluate the "level of effort" required to provide relief to the various guard posts as well as Paragon's "mix of labor" (including "billable guards," and not separately billable "relief guards") necessary to perform the services here. *Id.* at 4-5.

Deco's arguments are based upon a misunderstanding of the concept of price reasonableness. The purpose of a price reasonableness review is to determine

⁴ Deco contends that the contractor will be required to provide relief in the amount of a "paid" 15 minute break for every 4-hour shift and an "unpaid" 30 minute lunch for every shift of 8 hours or more. *See* Protest at 2. Deco contends that Paragon's [DELETED] percent factor for relief is insufficient to provide this amount of relief.

whether the prices offered are higher--as opposed to lower--than warranted.⁵ See WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. In contrast, arguments that an agency did not perform an appropriate analysis to determine whether prices are too low such that there may be a risk of poor performance concern price realism; price realism is not required where a solicitation provides for the award of a fixed-price contract, unless the solicitation provides for such an analysis. See id. at 3.

Simply, under this RFQ, for evaluation purposes, total price was determined by multiplying the quoted labor rate by the estimated number of hours for each CLIN. The solicitation did not specifically identify what amount of relief was required. More importantly, vendors were not required to demonstrate how they would provide relief, given that the contractor's relief plan would be provided 5 days after issuance of the BPA. Thus, the RFQ did not request that vendors identify what level of effort was required to provide relief services. To the extent the protester believes that the solicitation should have required vendors to provide this information and provide for a price evaluation that mirrored the requirements of FAR § 8.405-2(d), this allegation is untimely. 4 C.F.R. § 21.2(a)(1) (2008).

Gary L. Kepplinger
General Counsel

⁵ Generally, the General Services Administration has already determined that the rates for services offered at hourly rates under FSS contracts are fair and reasonable, and, thus, ordering activities are generally not required to make a separate determination of fair and reasonable pricing. In situations where, as here, a statement of work is required, the ordering agency must perform a price evaluation to determine that the vendor's total price is reasonable. See FAR §§ 8.404(d), 8.405-2(d).