



Decision

Matter of: Bestcare, Inc.

File: B-403585

Date: November 23, 2010

Joseph R. Harbeson, Esq., RuskinMoscouFaltischek, P.C., for the protester.
Mark Machiedo, Esq., Department of Veterans Affairs, for the agency.
Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly failed to solicit incumbent contractor is denied where presolicitation notice and solicitation were posted on FedBizOpps website and agency received adequate competition in the form of 12 proposals.

DECISION

Bestcare, Inc., of Levittown, New York, protests the award of contracts to several other firms by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA-243-10-RP-0141, for home health care services.

We deny the protest.

The VA posted a presolicitation notice for this procurement on the FedBizOpps website on April 2, 2010. Consistent with the presolicitation notice, the RFP was issued on April 5, and posted on FedBizOpps and the Central Contractor Registry on April 6. Twelve firms submitted proposals by the RFP's May 11 closing date. Bestcare later filed a protest with the agency, asserting that it had not been notified about the issuance of the RFP and requesting an opportunity to submit a proposal. Bestcare then filed this protest with our Office, arguing that, as an incumbent contractor for a period of years, it was entitled to be individually notified of the issuance of the RFP.

We will not sustain a protest challenging an agency's failure to solicit a successfully performing incumbent unless the record shows that adequate competition resulting in reasonable prices was not achieved, or there is conclusive evidence that the agency deliberately excluded an incumbent from the competition. E.g., [Timberland](#)

Logging, B-282461, July 8, 1999, 99-2 CPD ¶ 10 at 3.¹ Here, the VA received 12 proposals in response to the RFP, a number more than sufficient to achieve adequate competition and to support a finding of price reasonableness. Further, as explained below, the record does not show that the agency deliberately excluded Bestcare from the competition.

Bestcare argues that it was excluded due to the fact that “the agency chose an outlet which is rarely, if ever, used for public bidding,” FedBizOpps. Protest at 1. Bestcare also states that the VA did not notify incumbent contractors that the RFP had been issued, that the program administrators were not aware that the RFP had been issued, and that the RFP was not available through the VA website. Comments at 1-2. Bestcare asserts that “[s]uch secrecy suggests that the [VA] set out not to foster maximum competition, but to reduce the number of bidders to a minimum.” Id. at 2.

We disagree. Far from being a rarely used outlet for the advertisement of procurement opportunities, FedBizOpps is the currently designated Governmentwide Point of Entry (GPE), “the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public.” FAR § 2.101. Wherever agencies are required to publicize notice of a proposed contract action, they must transmit a notice of that action to the GPE. FAR § 5.203(a). Beyond these requirements, there are no further requirements to individually notify potential offerors, or to post notice of a contract action on an agency’s own website. Finally, we also find it unremarkable that the VA program staff were unaware that the RFP had been issued, as contracting actions are not generally undertaken by the program office, but by the agency’s contracting office.

¹ Bestcare cites Abel Converting, Inc., v. United States, 679 F.Supp. 1133, 1140 (D.D.C. 1988) for the proposition that an incumbent contractor has a right to expect to be solicited for a follow-on contract. However, Abel Converting was premised on regulatory requirements that are no longer in effect. Specifically, in 1988, the General Services Administration Acquisition Regulation (GSAR) required that “[a]ctive bidders (current contractors and bidders that responded to recent similar solicitations) shall be provided with bid sets for the same or similar items,” GSAR § 514.203-1 (1988), and the Federal Acquisition Regulation (FAR) required that agencies establish mailing lists of eligible and qualified firms and deliver notice of procurement actions to those firms. FAR § 14.203-1, 14.205-1 (1988). As the cited provisions of the GSAR and FAR have since been superseded or removed, the Abel Converting decision is inapplicable.

In sum, the record shows that the agency followed applicable regulations by publicizing notice of the RFP on FedBizOpps where it was publicly available to all interested offerors, and received adequate competition in the form of 12 proposals. In the absence of any conclusive evidence that the agency deliberately excluded Bestcare from the competition, and in light of the significant competition received in response to the RFP, we see no basis to conclude that the agency failed to meet its obligations. Interproperty Invs., Inc., B-281600, Mar. 8, 1999, 99-1 CPD ¶ 55.

The protest is denied.

Lynn H. Gibson
Acting General Counsel