

June 28, 2000

P.S. Protest No. 00-09

TECHNOLOGY TEAM INCORPORATED

Solicitation No. 10350-00-A-0099

DIGEST

Protest contending that services should be ordered pursuant to existing master ordering agreements is denied. Agreements do not require that they be used; postal policy does not require that orders be placed with small woman-owned business; as protester has declined to participate in alternate solicitation for the services, disagreement with contracting officer's apparent view of its capabilities need not be resolved.

DECISION

Technology TEAM Incorporated (TTI) protests the issuance of solicitation 10350-00-A-0099 for the prequalification of sources for interactive design engineering (IDE) support for the Postal Service's corporate internet web site.

TTI, a small, woman-owned business then known as TEAM Consulting, Incorporated, participated in a 1997 postal solicitation for internet web design services, in which it received ordering agreement 102590-98-B-H006 for "[t]echnical services to create static and interactive web presences." The ordering agreement did not commit the Postal Service to order any services from TTI, but provided for the issuance of firm fixed price task orders for which TTI and other firms with ordering agreements would compete on a "best value" basis. (B-H006, provision C.7.) The initial term of the ordering agreement was one year, but it could be renewed, at the Postal Service's option, for an indefinite number of annual renewal terms. (B-H006, provision C.2.) TTI recites that it has received 11 task order contracts, and that a total of 28 task order contracts have been awarded under the ordering agreements to it and to seven other vendors. The contracting officer refers to these 1997 ordering agreements as "World Wide Web Master Ordering Agreements" (MOAs).

Promptly following the April 10, 2000, Commerce Business Daily synopsis of solicitation A-0099, TTI directed a number of e-mail message to the Postal Service, the thrust of which was that its services should be the subject of competition under the existing MOAs. The contracting officer for solicitation A-0099 replied to TTI in an April 27 telephone conversation which TTI summarizes as reflecting his views that the MOAs did

not cover various elements covered by the new solicitation, and, in the protester's words: "that '[the Postal Service doesn't] have to use [the MOA] mechanism if we don't want to. It[']s only an ordering agreement' or words to that effect, and that [the contracting officer] and some colleagues from USPS [Information Technology] had 'looked at the Web MOA and concluded that the expertise was not there.'" (Protester's emphasis omitted.)

TTI's April 28 protest objects to the delay in the response to its inquiries¹ and describes the response as "abrasive and prejudiced" since "he has stated categorically that the MOA vendors lack the requisite expertise."

The contracting officer sent TTI an e-mail on April 28 which it received after it submitted its protest.² Further replying in his statement on the protest, the contracting officer notes that an "allegation that work under a protested solicitation should have been awarded under another, existing contract is not reviewable under the formal bid protest process," citing *Stamp Venturers, Inc.*, P.S. Protest No. 93-06, February 9, 1994;

¹ IDE prequalification submissions were due May 1. TTI's first e-mail of April 11, addressed to TTI's MOA contact, was forwarded to solicitation A-0099's contracting officer the next day. Since, as discussed below, the contracting officer offered to extend the time for the submission of TTI's prequalification data, the delay caused no harm.

² The e-mail stated, in pertinent part:

The Postal Service reviewed the scope of [MOA] and the Preferred Portfolio Provider (PPP) and determined that the neither purchasing vehicles possessed all of the expertise that was needed for this effort. The [MOAs] and PPPs were deficient in a number of areas. These areas included:

1. The [MOAs] and the PPPs scope do not focus on strategic and tactical web site support for the entire corporate Internet channel
2. The [MOAs] and PPPs were awarded prior to the installation of the Broadvision platform. Therefore, accommodating this specific platform was not addressed.
3. The [MOAs] and PPPs did not emphasize knowledge of, and skills for engineering/design guidance and execution focused on achieving continuous improvements through the development and use of metrics, feedback, and a planned improvement life cycle.
4. The [MOAs] and PPPs scope did not include brand management or banner management.

For the reasons stated above it was decided that it would be in the best interest of the Postal Service to compete this requirement. The Postal Service would welcome a pre-qualification from Technology Team.

As I stated yesterday in our phone conversation there ha[ve] been many changes in your industry and Technology Team may possess the necessary skills that the Postal Service requires.

COR, Inc., P.S. Protest No. 90-16, June 22, 1990, and *M.L. Halle Oil, Inc.*, P.S. Protest No. 85-76, November 26, 1985.

Continuing, the contracting officer asserts that the decision to prequalify a new pool of suppliers was made in the Postal Service's best interest. "First, the scope of the IDE effort is much broader and deeper than that of the [MOA] Second[, t]here is a need for assurance that the IDE firm selected will have significant strength and expertise to consult on, and apply, marketing and branding business concepts and techniques to the Postal Service's [i]nternet strategies." According to the contracting officer, a list of likely candidates for the IDE effort was developed, and "[o]nly one of the [MOA] suppliers appeared on the . . . listing." However, the contracting officer notes that TTI had been advised that the period for the submission of prequalification statements would be extended for a week or two week period if it wished to participate, but that TTI "in effect, declined the offer."

TTI replied to the contracting officer's statement. While it states that it understands "the position that [the Postal Service] can . . . pursue any purchasing process that suits its needs [and] the results of the existing administrative decisions . . . cited" it explains at some length its disagreement with the various grounds which the contracting officer had asserted as justifying the new solicitation in the telephone conversation of April 27, the April 28 e-mail, and the contracting officer's statement. It restates its objections to the contracting officer's characterization of the MOA holders in the telephone conversation and his delay in replying to TTI's inquiries, and expresses its concern that "the avoidance of the Web MOA contracting vehicle is not in keeping with the spirit and intent of the [Information Technology] Purchasing program as a whole, or the USPS Affirmative Purchasing program."

The contracting officer declined the opportunity to reply to TTI's comments.

DISCUSSION

The decisions which the contracting officer cites each arose in the context of a contention that an action was improper under an existing contract. *See, e.g., M.E. Halle, supra* (merits of cancellation of a basic pricing agreement are "matters of contract administration which are amenable to decision" under contract's disputes provisions); *COR, Inc., supra* (propriety of transferring services performed under contract to another contractor is "a matter of contract administration which is outside the scope of our bid protest jurisdiction"); *Stamp Venturers, supra* (protester's claims that its contract entitled it to receive orders placed with another "arise under a theory of breach of contract" resolvable under the contract's disputes provisions and hence not under the bid protest procedure).

It is not clear that those decisions are entirely apposite to the instant case, because TTI does not appear to be asserting a contractual entitlement to provide the IDE services nor does the competitive scheme of the MOAs suggest any basis for such an en-

titlement. The closest that it appears to come is its contention that the failure to use the MOA is inconsistent with the Information Technology purchasing program or the Postal Service's affirmative purchasing program.

Unfortunately for the protester, the Postal Service has no program which affords small woman-owned businesses a preference in the receipt of orders. While postal purchasing policy encourages the participation of such entities, *inter alia*, in the Postal Service's supplier base (Purchasing Manual (PM) 3.2.1.a), and undertakes not to exclude suppliers from competition on the basis of race, sex, and other inappropriate criteria (PM 3.2.1.b), there is no enforceable requirement that award be made to such suppliers or that orders be placed with them *Cf. COR, Inc., supra* (reaching that conclusion with respect to provisions in prior postal purchasing regulations).

What remains is TTI's disagreement with the contracting officer about its capability to meet the requirements of the IDE solicitation, a matter on which the contracting officer has offered apparently inconsistent views. Since TTI has declined to submit information in response to the IDE prequalification request, that disagreement is academic.

The protest is denied.

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Contract Protests and Policies