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**Comptroller General
of the United States**

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

Decision

Matter of: 3SG Corporation

File: B-298957

Date: January 5, 2007

Jasmine Sornabala, Esq., for the protester.
Dennis Foley, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.
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Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency improperly rejected a quotation for failing to comply with a solicitation requirement that the services be performed at the agency's facility, where the quotation expressly stated that the firm would perform the services at the agency's facility, and the agency's interpretation of other terms of the quotation as taking exception with this requirement was unreasonable.

DECISION

3SG Corporation protests the issuance of an order to Xerox Corporation under that firm's Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. 176078, issued by the Department of Veterans Affairs (VA), for a scanning and archival solution for the VA's Healthcare and Regional Office at the VA Medical Center (VAMC) in Anchorage, Alaska.

We sustain the protest.

The RFQ described the estimated 75,000 pages of documents to be scanned and archived as in "good condition" and "on white and color paper stock," and provided that "[f]inal format for delivery will be PDF Searchable Text format." The solicitation set forth a number of "Scanning & Archival requirements," stating, for example, that "[i]maging will be performed at the Veterans Administration facility in Anchorage, Alaska," and that the "[e]xact reassembly of hardcopy documents is

requested.”¹ RFQ at 2. Vendors were requested to describe, among other things, their approach to accomplishing the work required, as well as their “project team,” RFQ at 5, and were requested to complete a price schedule setting forth certain unit and extended prices for the estimated quantities listed. RFQ at 7.

The agency received quotations from only 3SG and Xerox Corporation, with 3SG’s quotation providing a total price of \$27,302.50, and Xerox’s quotation providing a total price of \$102,615. Agency Report (AR), Tab L, Worksheet. The agency concluded, after reviewing 3SG’s quotation, that it was unclear whether 3SG would perform the required services at the VA facility in Anchorage as required, and issued the order to Xerox. AR at 2, Tab K, E-mail (Sept. 28, 2006). In this regard, the agency, while noting that 3SG’s quotation expressly provided that “[i]maging services (document prep, scan, quality check and image load) will be performed at the Veterans Administration facility in Anchorage, AK,” found that 3SG’s quotation contained certain references that “suggested documents would be sent off site” by 3SG, thus rendering the quotation unacceptable. AR at 2; Tab J, 3SG Quotation, at 2.

The protester argues that its quotation clearly provided that the services would be performed at the VA facility in Anchorage, and that it should have received the order.

When an agency issues a solicitation under the FSS program, we will review the agency’s evaluation of vendor submissions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. SI Int’l, SEIT, Inc., B-297381.5; B-297381.6, July 19, 2006, 2006 ¶ CPD 114 at 11; COMARK Fed. Sys., B-278343; B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. Here, the RFQ did not identify any evaluation criteria or the basis for award. Nevertheless, it is clear from the record that the agency evaluated quotations for compliance with the requirements of the RFQ, and issued the order to the vendor submitting the low priced, compliant quotation. Since the protester challenges the determination that its quotation was unacceptable, we review that determination for reasonableness.

The agency cites to a number of references in 3SG’s quotation in support of its conclusion that the quotation, while expressly providing that the work would be performed at the VA’s facility in Anchorage, also indicated that the work would be performed “off site.”² For example, the agency points out that 3SG’s quotation

¹ The RFQ included similar requirements regarding the scanning and archiving of an estimated 107,000 images on 36 rolls of microfiche.

² The contemporaneous record of the agency’s evaluation of 3SG’s quotation consists of a copy of 3SG’s quotation with the hand-written notations of the agency evaluator in the margins, and an e-mail providing that “[t]he proposal from 3SG indicated documents would be sent off site” and recommending that the “contract be awarded to Xerox.” AR, Tab J, 3SG Quotation; Tab K, E-mail (Sept. 28, 2006). Although explanations provided by the agency regarding its determinations that are described
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included a “Client Participation” section, where 3SG detailed certain assumptions it had made with regard to the “support and feedback” it would receive from the VA “during the planning and execution of the project.” AR at 2, 4; Tab J, 3SG Quotation, at 8. This section of 3SG’s quotation stated under the heading “Inventory” that “[i]t is assumed that the client will provide an accurate description of the documents to be processed,” and that “[i]t is assumed that the client will keep detailed records regarding what documents they are sending to be processed, and that the client will share this information in the form of hard and soft copy packing slips.” AR, Tab J, 3SG Quotation, at 8. The agency, emphasizing the quotation’s use of the term “sending,” found that this latter comment indicated to the VA that 3SG was in fact proposing to perform the work “off site,” because the “VA would not be sending any documents anywhere as it required all work to be performed on site at the VAMC.” AR at 2, 4.

The agency similarly contends that the statement in 3SG’s quotation, providing that “completed batches . . . will be transferred to the client,” indicated that work would be performed off-site because, as reasoned by the agency, if the work were performed on-site, “[b]atches would never leave client as all work was to be performed on site at the VAMC.” AR at 2, 4; Tab J, 3SG Quotation, at 22. The agency also refers to the quotation’s flowcharts that “illustrate files coming from client and delivered back to client,” with the agency concluding from this that “[w]ork on site would not require this.” AR at 2, 4; Tab J, 3SG Quotation, at 23, 25. As another example, the agency notes that an entry on a form included in the quotation, under the heading “Deliverables,” provided for the “number of pages scanned/delivered,” which it asserts also indicates that the work would be performed off-site because “[p]ages would not need to be delivered for work performed on site.” AR at 2, 4; Tab J, 3SG Quotation, at 27.

In our view, the agency’s reading of 3SG’s quotation and determination that the quotation either expressly provided that the work would not be performed at the VA’s Anchorage facility or was ambiguous as to whether the work would be performed at the VA’s Anchorage facility were simply unreasonable. As an initial matter, much of the agency’s concern seems to be centered around its view that because the project is to be performed on-site at the VA facility, any reference in 3SG’s quotation to the “sending” or “transferring” of hardcopy documents or other items as necessary from the agency to the contractor, or from the contractor back to the agency, equated to a statement that the hardcopy documents will be sent or transferred by 3SG to an off-site facility for imaging. The agency has provided no

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in this decision are taken from the legal memorandum provided by the VA with its agency report in response to this protest, we give them weight as they are consistent with the contemporaneous record as reflected by the evaluator’s hand-written notations. See Jason Assocs. Corp., B-278689 et al., Mar. 2, 1998, 98-1 CPD ¶ 67 at 6.

support for this notion and we fail to understand how it can be considered reasonable. In this regard, the performance of the work required at the VA's Anchorage facility as required by the RFQ necessitates that the hardcopy documents be given by the agency to the contractor, and then after the imaging has been completed, returned by the contractor to the agency. RFQ at 2. Whatever words are used to describe this process, its very nature requires that the documents be transferred from one party to the other. Put another way, the order simply could not be performed if the VA retained physical custody of the hardcopy documents or microfiche, thus denying the contractor access to them. With this understanding, 3SG's quotation, when considered in context and read through in its entirety, and which begins with the unequivocal statement that the services "will be performed at the Veterans Administration facility in Anchorage, Alaska," and notes that in accordance with the terms of the RFQ that "3SG will scan and store VA documents on the VA servers," AR, Tab J, 3SG Quotation, at 2, can only be reasonably read as providing a relatively detailed description of the processes 3SG employs with regard to, among other things, the receipt, tracking, processing, and reassembly of the hardcopy documents, which are to be scanned and returned to the agency within the VA facility.

For example, the reference in the "Client Participation" section of 3SG's quotation to the VA keeping "detailed records regarding what documents [VA] is sending to be processed," pointed to by the agency in support of its rejection of 3SG's quotation, appears to be no more than 3SG stating its expectation that during the course of its performance of the work the agency will maintain detailed records regarding the hardcopy documents that the VA provides to 3SG for imaging. In light of the fact that the RFQ provides for the ordering and payment of the services on a unit price basis, the apparent importance of the hardcopy documents and microfiche to the agency, the volume of hardcopy documents and microfiche to be processed, and 3SG's view of its "role as the 'entrusted custodian' of critical documents," the quotation's references to the agency "sending [documents] to be processed" and "packing slips" can only reasonably be read as elements of the protester's proposed on-site management of the project. See AR, Tab J, 3SG Quotation, at 1, 8. As indicated above, we cannot find reasonable the agency's view that the quotation's reference to the documents being "sent" to 3SG equates to the transfer of the documents to an off-site facility, particularly in view of 3SG's unequivocal statement that the work would be done on-site.

We also find unreasonable the agency's determination that the statement in the quotation that "completed batches . . . will be transferred to the client" indicated that the work would be performed off-site. As indicated, the agency suggests the work will be done off-site because, if the work were performed on-site, "[b]atches would never leave client as all work was to be performed at the VAMC." However, as discussed above, hardcopy documents and microfiche will in fact have to be physically transferred from the agency to the contractor in order for the contractor to perform the imaging services, regardless of whether that work is performed at the VA's Anchorage facility or off-site.

As a final example, we find unreasonable the agency's similar determinations that the quotation's flowchart and description of "deliverables" equated to statements that the work would be performed off-site. In our view, the flowchart, which does not refer to the performance of any work off-site, simply illustrates the steps in 3SG's process, while the "deliverable" described here (the "number of pages scanned/delivered") refers to the service and end item that will be provided to the agency by the contractor.³ We find unreasonable the agency's conclusion that the quotation's inclusion of a flowchart and reference to a "deliverable" either expressly provided that the order would be performed in whole or in part off-site, or created an ambiguity as to whether the order would be performed at the VA's facility in Anchorage. Again, there is nothing in the flowchart that can reasonably be considered as inconsistent with 3SG's unequivocal statement that it will perform the required services at the VA's Anchorage facility.

The protest is sustained. We recommend that the order placed with Xerox be terminated and the order be issued to 3SG, if otherwise appropriate. We also recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2006). In accordance with section 21.8(f) of our Regulations, 3SG's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Gary L. Kepplinger
General Counsel

³ We note in this regard that the RFQ includes a section entitled "Project Deliverables." RFQ at 6.