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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Data Integrators, Inc.

File: B-310928

Date: January 31, 2008

Robert Denton for the protester.

Julie Kelley Cannatti, Esq., and Roy E. Potter, Esq., Government Printing Office, for the agency.

Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly issued purchase order to vendor whose quotation was received after the deadline for submission of quotations is sustained, where solicitation incorporated by reference late quotation provision expressly providing that quotations must be received by deadline to be considered.

DECISION

Data Integrators, Inc. protests issuance of a purchase order to The Data Center, Inc. (TDC) under Government Printing Office (GPO) Quotation Request for Jackets 740-264 and 740-268, for printing of "2008 General Enrollment Package (English)" and "2008 General Enrollment Package (Spanish)," respectively, for the Department of Health and Human Services.

We sustain the protest.

The solicitation, dated November 30, 2007, included the instruction "Quotations are Due By: (Eastern Time) 10:00 AM on 12/04/07." Agency Report (AR), Tab B. Data Integrators submitted a quotation prior to 10 a.m. on December 4. Protest at 1; AR at 2.¹ On December 4, at 10:41 a.m., GPO prepared an abstract of quotations that indicated that two quotations had been received, and that Data Integrators' was the

¹ GPO advises that this procurement was conducted under GPO's small purchase procedures. AR at 2-3; see GPO, Printing Procurement Regulation, Apr. 10, 2001, Ch. VII, § 4. Applicability of those procedures, however, does not affect our decision.

lowest-priced. AR, Tab D. GPO informed Data Integrators that its quotation was low and, at 11:29 a.m., e-mailed a copy of GPO's data use agreement to the firm and asked that it be completed and returned. Protest at 1; AR, Tab E. That same day, at 2 p.m., GPO received a quotation from TDC. AR, Tab F. GPO then prepared another abstract, which indicated that TDC's quotation was low. AR, Tab G. At 2:19 p.m., Data Integrators returned the completed data use agreement via e-mail. AR, Tab H. At 3:08 p.m., the agency advised Data Integrators by e-mail that it had received additional quotations that would be considered. AR, Tab I. Later that day, GPO issued a purchase order to TDC based on its low price. AR, Tab K.

Data Integrators asserts that issuance of the purchase order to TDC was improper, since TDC's quotation was not received until after the established deadline for receipt of quotations. Data Integrators complains that it was "at a distinct disadvantage" vis-à-vis TDC, since submitting its quotation after the deadline gave TDC more time to "get better pricing and terms." Protest at 2.

GPO responds that acceptance of the late quotation was proper based on decisions of our Office setting forth the principle that solicitation language requesting quotations by a certain time does not establish a firm closing time for receipt of quotations. AR at 2; see, e.g., Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3.

Acceptance of the late quotation was improper. GPO is correct that solicitation language setting a certain date and time for submission of quotations generally does not establish a firm deadline for receipt of quotations. However, where the solicitation contains a late submission provision expressly providing that quotations must be received by the stated deadline in order to be considered, quotations cannot be considered if received after the deadline. See M.Braun, Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96; DataVault Corp., B-248664, Sept. 10, 1992, 92-2 CPD ¶ 166 at 2; Instruments & Controls Serv. Co., supra.

Here, the solicitation stated that "GPO Contract Terms (GPO Pub. 310.2, effective December 1, 1987 (Rev. 6-01)) applies." AR, Tab B. The referenced GPO contract terms, in section 7(a) under "Solicitation Provisions," included a late submission provision providing that any bid "received ... after the exact time specified for receipt will not be considered" (except under specified exceptions not applicable here). This is precisely the type of provision that we have held precludes an agency from accepting a quotation submitted after the stated deadline. Although section 7 refers to "bids," it is clear from GPO's incorporation of this provision in the solicitation that it was intended to apply to the quotations received here. We conclude that, since TDC's quotation was received after the deadline set forth in the solicitation, it could not be accepted; issuance of the purchase order to TDC therefore was improper. See M.Braun, Inc., supra.

On December 13, 2007, GPO advised us by letter that it had determined "continued performance under the purchase order issued for the Quotation Request at issue to

be in the best interests of the Government.” Where, as here, an agency determines that it is in the best interest of the government to proceed with performance in the face of a protest to our Office, and we sustain the protest, we are required by the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(b)(2) (2000), to make our recommendation for corrective action without regard to any cost or disruption from terminating the contract, or recompeting or reissuing the solicitation. Department of the Navy—Modification of Remedy, B-274944.4, July 15, 1997, 97-2 CPD ¶ 16 at 2-4. Ordinarily, therefore, we would recommend that GPO cancel the purchase order issued to TDC and issue an order to Data Integrators based on its lowest-priced, timely quotation. See, e.g., e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 9-10 (agency directed to conduct new source selection decision and cancel order if necessary).

Here, however, shipment was required by December 31, 2007, and we have been advised by GPO that delivery has been completed. Under these circumstances, we cannot recommend that GPO cancel TDC’s purchase order and issue a new order to Data Integrators, since there is no substantial part of the purchase order remaining to be performed. See Information Ventures, Inc., B-293518, B-293518.2, Mar. 29, 2004, 2004 CPD ¶ 76 at 5 (GAO cannot recommend disturbing award where contract for educational services was largely completed); International Data Sys., Inc., B-277385, Oct. 8, 1997, 97-2 CPD ¶ 96 at 5 (corrective action not available when contract for personal computers fully performed). Accordingly, we recommend that Data Integrators be reimbursed its costs of quotation preparation and of filing and pursuing the protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1), (2) (2007). Data Integrators should submit its certified claim for costs, detailing the time expended and costs incurred, directly to GPO within 60 days after the receipt of this decision.

The protest is sustained.

Gary L. Kepplinger
General Counsel