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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Garner Multimedia, Inc.

File: B-291651

Date: February 11, 2003

J. Patrick McMahon, Esq., and William T. Welch, Esq., Barton, Baker, McMahon & Tolle, for the protester.

Capt. Joseph V. Fratarcangeli, Department of the Army, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

On a competition among Federal Supply Schedule vendors, where technical proposals are requested and award was to be to the vendor submitting lowest priced technically acceptable quotation, agency lacked reasonable basis to reject lowest priced quotation as technically unacceptable where the solicitation contained no information about what information was expected in the technical proposal and the proposal addressed, and did not simply repeat, the statement of work tasks incorporated into the solicitation.

DECISION

Garner Multimedia, Inc. protests the issuance of a delivery order to MountainTop Technologies, Inc. under request for quotations (RFQ) No. DASW01-02-F-1516, issued by the Department of the Army for the "Salute Our Services" pilot program. Garner contends that the Army improperly determined that its quotation was technically unacceptable.

We sustain the protest.

This procurement is to acquire a technology-based program that provides Internet-based programs and support services to U.S. Army active and reserve components and their dependents. The "Salute Our Services" pilot program covered by this procurement includes four main task areas: (1) the development and implementation of an interactive ".com website," (2) the development of a mentoring program, (3) the development of an outreach partnership program with private sector corporations and businesses, and (4) the development and implementation of

appropriate training to facilitate the use of the website by families and loved ones. The 6-page statement of work (SOW) for the program contains the program background, states the objectives and the various project tasks of each of the main task areas, and requires a detailed action work plan to be submitted to the agency within 10 working days of the order.

The agency sent the RFQ for this program to vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts for web-site design and maintenance services. The RFQ contemplated the award of a fixed-price purchase order for 1 year with a 1-year option. The RFQ requested vendors “to prepare and submit a price and technical proposal in accordance with the [SOW],” and stated:

The Government will award a single award resulting from this [RFQ] to the responsible offeror whose technical proposal meets the minimum needs of the Government at the lowest overall price to the Government.

The RFQ did not include any guidance concerning the contents of the technical proposal or list any evaluation criteria.

The agency received two quotations, from Garner and MountainTop, in response to the solicitation. Garner’s quotation was priced at \$2,200,048.05, and MountainTop’s at \$2,307,600. Both vendors submitted technical proposals that responded to the SOW requirements. Regarding Garner’s and MountainTop’s technical proposals, the agency’s evaluator stated the following:

It appears to me that Garner . . . simply restated the tasks in the SOW with no corroborating data or description of what is involved in performing the tasks. There is no reference to the type of technology they will use, i.e. servers, database software. I do not find that they are technically capable to perform this contract.

MountainTop . . . explained in detail how they would accomplish the tasks, even providing diagrams of the technological aspect of the servers.

Agency Report, Tab 9, Source Selection Technical Evaluation, at 1. Determining that Garner’s quotation was technically unacceptable, the agency made award to MountainTop. After filing an agency-level protest, which was denied, Garner filed the present protest in our Office.

Garner protests the rejection of its quotation as technically unacceptable, arguing that it was never advised what information the agency was expecting to be included in its quotation. Garner contends that its quotation was technically acceptable, inasmuch as its 36-page technical proposal did not simply recite the SOW

requirements, but addressed each SOW item, providing details of how it would accomplish each task so as to demonstrate that it had the personnel, management skills and corporate experience necessary to perform the required tasks.

Where an agency treats the selection of vendors for an FSS order as a competition in a negotiated procurement, and a protest is filed challenging the outcome of the competition, we will review the agency's actions to ensure that the evaluation was fair, reasonable and consistent with the terms of the solicitation. See COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. To satisfy its obligation to treat vendors fairly, the agency should in some fashion inform vendors of its essential requirements, so that a fair and intelligent competition can be achieved. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 4; Haworth, Inc.; Knoll N. Am., Inc., B-256702.2, B-256702.3, Sept. 9, 1994, 94-2 CPD ¶ 98 at 5-6; see Federal Acquisition Regulation § 1.102-2(c)(3).

Here, while the RFQ required submission of a technical proposal, and stated that award would be made to the vendor submitting the low-priced technically acceptable proposal, it did not provide any details of what the agency expected the technical proposal to address, so that a fair and intelligent competition could be achieved. Instead the RFQ stated only that the technical proposal was to be "in accordance with the [SOW]." Where, as here, an agency completely fails to provide guidance as to the desired content of technical proposals or the basis for evaluating them, we believe that any doubt as to the acceptability of a vendor's technical proposal should be resolved in favor of the vendor.¹ See COMARK Fed. Sys., *supra*, at 5-6; cf. SKJ & Assoc., Inc., B-291533, Jan. 13, 2003, 2003 CPD ¶ __ at 5 (same presumption where agency fails to provide such guidance in solicitation issued under simplified acquisition procedures).

Here, the agency determined that Garner "restated the SOW tasks with no corroborating data or description of the what is involved in accomplishing the tasks." Agency Report, Tab 9, Source Selection Technical Evaluation, at 13. If it were true that the Garner proposal merely restated the SOW tasks, then the agency might have had a reasonable basis to reject Garner's quotation, because by requesting a technical proposal it was apparent that the agency was seeking more than a copy of the SOW. However, Garner's 36-page technical proposal was clearly

¹ The agency argues that the protest is essentially an untimely challenge against the solicitation and should be dismissed as untimely, pursuant to 4 C.F.R. § 21.2(a)(1) (2002). We disagree. We believe that the basis of protest only became apparent when Garner's quotation was rejected as technically unacceptable and the protester learned that the agency's needs were other than what was stated in the RFQ. Since Garner protested to the agency within 10 days of its receipt of the notice of award to MountainTop, the agency-level protest, and the subsequent protest to our Office, are timely. 4 C.F.R. § 21.2(a)(3).

more than a repetition of the 6-page SOW. Its technical proposal addressed each of the SOW tasks, including elements of how these tasks would be accomplished, and referenced its skills and experience with regard to the tasks, and included an executive summary, an introduction, a technical approach discussion, a management plan, a quality assurance plan, resumes of key personnel and a discussion of Garner's corporate capability. For example, Garner's proposal stated that it had extensive experience developing secure websites "using custom validation procedures," citing some specific projects, and in connection with the present project, Garner's proposal stated that its proposed website would be password protected and would require registration, items not mentioned in the SOW. Agency Report, Tab 6, Garner's Quotation, Technical Proposal, at 4.

Given the complete absence of instruction from the agency concerning what information should be included in the requested technical proposals, we find that the agency lacked a reasonable basis to find Garner's quotation technically unacceptable. Garner's quotation took no exception to the RFQ requirements, and addressed the four main task areas in the RFQ. If the agency desired the information in a certain format or required certain information to demonstrate technical acceptability, such as listing the types of technology that will be used, it should have indicated this in the RFQ, or requested this information during the discussions that it could have conducted with the vendors. In this regard, Garner states that had it been requested to provide these specifics, it easily could have done so. We conclude that the agency lacked a reasonable basis for finding Garner's technical proposal unacceptable, and that the protester was prejudiced by the agency's actions in this regard.

We recommend that the agency amend the RFQ to state the desired content of the technical proposals, and the criteria to be applied in evaluating them and selecting the winner. The agency should obtain revised quotations and if, upon reviewing quotations in response to the amended RFQ, the agency selects a vendor other than MountainTop, we recommend that the agency cancel that firm's delivery order and award to the selected company. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after the receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel