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**Comptroller General
of the United States**

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

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Decision

Matter of: 4D Security Solutions, Inc.

File: B-400351.2; B-400351.3

Date: December 8, 2008

Kenneth B. Weckstein, Esq., and Howard A. Wolf-Rodda, Esq., Brown Rudnick LLP, for the protester.

Charmaine A. Howson, Esq., Department of Energy, for the agency.

Linda S. Lebowitz, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated and rejected the protester's quotation as technically unacceptable where the protester submitted an ambiguous quotation that failed to comply with a material specification requirement in the solicitation.

DECISION

4D Security Solutions, Inc., of South Plainfield, New Jersey, protests the selection of Next Wave Systems, LLC, of Bloomington, Indiana, under request for quotations (RFQ) No. DE-RQ52-08NA28542, issued by the Department of Energy, National Nuclear Security Administration, as a total small business set-aside for a mesh wireless broadband system and technical support for the Nevada Test Site, Las Vegas, Nevada. 4D challenges the agency's evaluation and rejection of its quotation as technically unacceptable.

We deny the protest.

The agency issued the combined synopsis/solicitation on March 28, 2008, and conducted this procurement under Federal Acquisition Regulation (FAR) Subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items. A mesh wireless broadband system is a network created by a grid of wireless access points--known as "nodes"--that contain radios which provide wireless access to users and transport, on a wireless basis, video and data traffic to and from nearby nodes. Video surveillance is streamed through the mesh network to a designated control room for monitoring. Mobile users can continuously access broadband services as they move throughout the coverage area enabling visual security mobility. Agency Report at 1.

As relevant here, the RFQ specifications (design and performance requirements) provided that “[t]he system shall require no more than three hops between a field device or vehicle and a terminal node at any time and shall maintain a minimum sustained bandwidth of 4 Mbps [megabits per second] with the exception of the vehicle modems, which shall sustain a minimum of 1 Mbps.” RFQ ¶ 3.2(b); see also RFQ ¶ 3.1 (“[t]he system shall have no more than three (3) hops between any two components (Backhaul modem, Access Points (AP) or Wireless Router (WR) with a minimum bandwidth of 4 Mbps sustained bandwidth at any time”).

The RFQ provided that the award would be made to the responsible vendor whose quotation, conforming to the solicitation, was determined to be most advantageous to the government, price and other factors considered. The RFQ stated that quotations would be evaluated based on the following factors, listed in descending order of importance (with the technical evaluation subfactors being of equal importance): (1) socioeconomic status; (2) technical (specification requirements, ease of maintenance, equipment integration and growth, and past performance); and, (3) price. With respect to the specification requirements technical evaluation subfactor, the RFQ stated that the vendor “must show how [its] system will meet the requirements of the specification.” RFQ at 2. Under the terms of the RFQ, the agency intended to evaluate quotations and select a vendor without conducting discussions; accordingly, vendors were advised that their initial quotations should contain their best terms from a price and technical standpoint.

Ten vendors, including 4D and Next Wave, submitted quotations on May 16. As relevant here, 4D quoted a Motorola-based mesh technology. 4D Quotation, Executive Summary, at 3. In one part of its quotation, 4D stated:

The current design has [deleted] nodes of which [deleted] are IAPs (Intelligent Access Points) and [deleted] are MWRs (Mobile Wireless Routers). The IAPs are broadband gateways to the wired network which provide up to [deleted] Mb/s via the backhaul link to the network (i.e., to a location where there is a wired connection to the network) as well as connectivity to the MWRs with [deleted] data rates up to [deleted] Mb/s and sustained data rates of [deleted] Mb/s. Both the MWRs and the IAPs provide local wireless mesh access for users in vehicles. Each vehicle in turn is outfitted with a Vehicular Mobile Modem (VMM), which provides standard Ethernet connectivity to any Ethernet enabled device such as laptops, IP cameras and IP sensors.

4D Quotation ¶ 3.1.1, Mesh Network Technology, at 5 (emphasis added).

In another part of its quotation, 4D stated that its “proposed system fully complies with the specifications in the solicitation.” 4D Quotation ¶ 3.2, Compliance, at 8. 4D then provided a chart listing the RFQ specifications and a description of its

compliance approach. Again, in relevant part, with respect to RFQ specification ¶ 3.2(b), which required “a minimum sustained bandwidth of 4 Mbps with the exception of the vehicle modems, which shall sustain a minimum of 1 Mbps,” 4D stated that its quoted system “compl[ie]d” with the specification and that its “system shall be designed to support field devices with fewer than 3 hops. Every node will connect to the central location with 1 or 2 hops, and will have [deleted] Mbps throughput.” 4D Quotation, Design and Performance Requirements (Specification section 3.2), at 13.

The technical security engineer for the Office of the Assistant Manager for Safeguards and Security at the Nevada Site Office served as the agency’s sole technical evaluator. Based on this individual’s evaluation of quotations, the agency determined that 4D’s quotation, which was based on the use of Motorola equipment, represented the best value to the government due in part to the ease of integration of 4D’s quoted system into the existing system. The agency concluded that the price premium associated with 4D’s quotation was justified because 4D wrote the code for the existing system and its quotation would save the government time and money in terms of integrating the new system.

Following its debriefing, Next Wave filed a protest with our Office in which it challenged the selection of 4D on the basis that the Motorola equipment quoted by 4D would not satisfy the RFQ specification requiring a minimum sustained bandwidth of 4 Mbps (with the exception of the vehicle modems). To support its position, Next Wave stated that it learned at training provided by Motorola that “a minimum of 4 Mbps of sustained bandwidth throughout the network is not possible with the [particular Motorola] equipment [quoted by 4D].” Next Wave e-mail to Agency, July 9, 2008. Next Wave also submitted information (in a chart format) received at the Motorola training to substantiate its position that a sustained bandwidth of 4 Mbps was not possible with the particular Motorola equipment quoted by 4D. Next Wave e-mail to Agency, July 11, 2008.¹

In reviewing Next Wave’s protest, including the information Next Wave stated it received at training provided by Motorola, the agency determined it would take corrective action by reevaluating initial quotations in accordance with the terms of the RFQ. On July 21, our Office dismissed Next Wave’s protest based on the corrective action to be taken by the agency.

By letter dated July 31, 4D submitted a “clarification in response to [Next Wave’s] protest.” 4D Letter to Agency, July 31, 2008. In this letter, 4D stated that it sought

¹ Next Wave quoted Firetide-based mesh technology, stating in its quotation that “[deleted].” Next Wave Quotation at 3. Next Wave further stated in its quotation that the Firetide equipment “[deleted].” *Id.* at 4. Next Wave “[took] no exception to any requirements of the specification.” *Id.* at 17.

“to correct an inaccurate interpretation of [its] compliance [with] the [RFQ’s] bandwidth requirements.” *Id.* After setting forth the RFQ specifications, as quoted above, 4D stated that the “Motorola mesh network in [its] proposed system provides [deleted] Mbps between backhaul modems, access points and wireless routers. Vehicle modems are clearly excluded from the [deleted] Mbps requirement. Our system provides [deleted] Mbps to vehicle modems as required.” *Id.* The agency did not consider this “clarification” from 4D because, in implementing the corrective action, the agency did not hold discussions with vendors or otherwise allow vendors to submit revised quotations.

The same technical evaluator reevaluated the vendors’ initial quotations using the evaluation scheme set forth in the RFQ. The evaluator determined that 4D’s quotation satisfactorily addressed all components of the technical evaluation, with the exception of the 4 Mbps minimum sustained bandwidth specification. The evaluator noted the inconsistent statements in 4D’s quotation, as set forth above, regarding whether 4D’s quoted system would comply with the RFQ specification in terms of maintaining 4 Mbps of minimum sustained bandwidth. As a result of these inconsistent statements, the evaluator concluded that 4D’s quotation “fail[ed] the technical evaluation.” Technical Evaluation, Aug. 18, 2008, at 2. In contrast, the evaluator determined that Next Wave’s quotation satisfactorily addressed all components of the technical evaluation, concluding that its quotation “meets and/or exceeds all procurement requirements.” *Id.* at 3. On September 16, the agency selected Next Wave, determining that its quotation represented the best value to the government. Following its debriefing, 4D filed this protest.

4D challenges the evaluation and rejection of its quotation as technically unacceptable for failing to comply with the RFQ specification requiring a minimum sustained bandwidth for the system of 4 Mbps. 4D complains that had the agency considered its quotation in its entirety, the agency would have concluded that its quoted system satisfied the referenced RFQ specification. Comments at 15.

In reviewing protests of an agency’s evaluation, our Office does not reevaluate vendors’ quotations; rather, we review the record to ensure that the agency’s evaluation was reasonable and consistent with the terms of the solicitation. Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 2. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. *See, e.g., Stewart Distributors*, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. *Id.* Here, we find that the agency reasonably evaluated and rejected 4D’s quotation as technically unacceptable.

As stated above, the RFQ required a vendor to “show how [its] system [would] meet the requirements of the specification.” 4D failed to unambiguously demonstrate that

its quoted system would satisfy the RFQ's minimum sustained bandwidth specification of 4 Mbps. Again, in one part of its quotation, 4D stated that there would be "sustained data rates of [deleted] Mb/s," while in other parts of its quotation, 4D offered to comply with the referenced specification. In light of these inconsistent statements in its quotation, we believe that the agency could, and did, reasonably conclude that it was not clear from the face of 4D's quotation that its quoted system would satisfy the RFQ's minimum sustained bandwidth specification and, as a result, 4D's quotation was reasonably evaluated and rejected as technically unacceptable. *Id.* at 5. Moreover, 4D's statements of compliance with the RFQ specification were not sufficient, and did not otherwise cure, the inconsistent statements in its quotation. *Id.* at 4 n.5. On this record, we have no basis to question the agency's actions.

4D further objects to the agency's decision, in implementing the corrective action, to ignore its July 31 "clarification" letter, quoted above, which, according to 4D, established its compliance with the RFQ's minimum sustained bandwidth specification. Comments at 13. This argument is without merit. If the agency had considered the information in 4D's "clarification" letter--in which 4D appears for the first time to clearly agree to satisfy the referenced specification--this would have constituted discussions, allowing 4D to materially alter or explain its quotation by having the agency consider information not contained within the four corners of its initial quotation. See *Colson Servs. Corp.*, B-310971 *et al.*, Mar. 21, 2008, 2008 CPD ¶ 85 at 13 (the "acid test" for deciding whether discussions have been held is whether it can be said that an offeror or vendor was provided the opportunity to modify or revise its proposal or quotation). The agency was under no obligation to hold discussions, however. In this regard, the RFQ, while reserving to the government the right to hold discussions if the contracting officer later decided it was necessary to do so, clearly indicated that the agency intended to make its selection decision without holding discussions.² See *Chicago Dryer Co.*, B-293940, June 30, 2004, 2004 CPD ¶ 137 at 3-4.

Finally, 4D makes a number of other allegations that we have considered and find to be without merit. For example, 4D complains that after Next Wave learned that 4D had initially been selected, Next Wave sent a series of e-mails to the agency in which Next Wave asserted that the Motorola equipment quoted by 4D did not comply with the RFQ's minimum sustained bandwidth specification. The agency responded by indicating that it would consider the information provided by Next Wave. 4D asserts that these e-mail communications constituted discussions. Comments at 15.

² As noted above, the record shows that, consistent with its expressed intention, the agency did not hold discussions with any of the vendors during the course of the procurement.

We disagree. In making the decision to take corrective action in response to Next Wave's protest, there was nothing improper in the agency considering the information provided by Next Wave after it learned that 4D had been selected, including the information in Next Wave's protest to our Office questioning whether the Motorola equipment quoted by 4D would satisfy the RFQ's minimum sustained bandwidth specification. In any event, the record shows that it was the lack of clarity with respect to the technical requirements in 4D's quotation which caused the agency to reject it. In sum, the record shows that the agency did not conduct discussions with Next Wave as Next Wave, like 4D and the other vendors, was never given an opportunity to modify or otherwise revise its initial quotation to materially enhance the potential for this quotation to be selected for award. Colson Servs. Corp., supra.

The protest is denied.³

Gary L. Kepplinger
General Counsel

³ To the extent 4D relies on a letter provided by Motorola dated September 20, 2008, in which Motorola states that the system quoted by 4D in this procurement "meets all required specifications" of the RFQ, Motorola Letter to 4D, Sept. 20, 2008, we think that the agency reasonably did not give weight to Motorola's self-serving assessment in evaluating the technical merits of 4D's initial quotation.