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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Spectrum Systems, Inc.

File: B-401130

Date: May 13, 2009

Ralph L. Lotkin, Esq., for the protester.

Richard Martinelli, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly accepted a quotation that complied with the solicitation's requirements, where there was no significant countervailing evidence reasonably known to the agency evaluators that should have created doubt as to whether the vendor will or can comply with the solicitation's requirements; whether the vendor, whose quotation agreed without exception to furnish a product in accordance with the terms of the solicitation, actually delivers a product compliant with the terms of the solicitation is a matter of contract administration, which is for consideration by the contracting agency, rather than GAO.
 2. Agency, in calculating the vendors' proposed prices and in its best value analysis, properly did not perform a life cycle cost analysis regarding the solicited software and associated maintenance, where the solicitation did not provide for the performance of a life cycle cost analysis.
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DECISION

Spectrum Systems, Inc. of Fairfax, Virginia protests the establishment of a blanket purchase agreement with MTM Technologies of Stamford, Connecticut, under request for quotations (RFQ) No. N00104-09-Q-ZF30, issued by the Department of the Army, for "Data at Rest" encryption software used to protect stored electronic information. Spectrum argues that the product offered by MTM fails to comply with a material requirement of the solicitation, and that the agency's price evaluation was inconsistent with the terms of the solicitation.

We deny the protest.

The RFQ provided for the establishment of a single BPA against the vendor's Federal Supply Schedule contract. The solicitation stated that the BPA would "provide for decentralized ordering by the entire Department of the Navy . . . and will include fixed price line items for a two year ordering period." The RFQ advised that the BPA would be established with the vendor whose quotation conforming to the RFQ was determined to represent the best value to the government based upon the evaluation factors, listed in descending order of importance, of technical, price, experience, and past performance. RFQ at 2.

The RFQ included a statement of objectives that provided "the Government's overall objectives, and the [vendor's] required support to achieve those objectives." RFQ at 2. Vendors were instructed to prepare a statement of work based upon the RFQ's statement of objectives, and were informed that the statement of work "shall be submitted as part of the proposal and will become an attachment to the contract at award." RFQ at 2-3. As part of their technical proposals included in their quotations, and "[t]o facilitate the technical evaluation," vendors were required to "complete the Vendor Solution Matrix" included in the solicitation. RFQ at 3. This matrix listed 51 items that were designated as requirements, such as "Licenses are transferable within the Department of the Navy," seven items that were designated as "significantly important," 25 items that were designated as "important," and 16 items that were designated as "desirable." RFQ, attach. 2. Vendors were required to complete this matrix by checking a "yes" or "no" response as to whether their particular product meets the requirement listed, and in most cases were requested to "[p]rovide an explanation of how the product meets this requirement." Id.

With regard to price, vendors were required to complete a price schedule included in the RFQ, which provided generally for the insertion of the product's name, what the license consisted of, the part number, and price per user, as well as price for maintenance. The solicitation provided for pricing to be provided for "multiple quantity tiers," such as 2,501 to 5,000 users, and 5,001 to 10,000 users, and stated that for "pricing purposes, the total estimated quantity for ordering of licenses over a two year period is 160,000 users." RFQ at 3. The solicitation added that "[a]s a minimum, firm fixed prices shall be provided for decentralized [Department of the Navy] ordering of license, maintenance and training." Id. Offerors were informed here that "[l]icense and maintenance prices will be considered on a comparative per seat basis with other proposed prices received in response to the solicitation," and that "[t]raining prices will be evaluated for compliance to the stated RFQ requirements but will not be included in the comparative analysis." Id.

The agency received quotations from nine vendors, including Spectrum and MTM, and ultimately selected MTM's quotation as representing the best value to the government. Spectrum filed a protest with the agency challenging the award, and after that protest was denied, filed this protest with our Office.

Spectrum first protests that the products offered by MTM do not have a Federal Information Processing Standards (FIPS) 140-2 validation, and as such do not meet a

mandatory requirement set forth in the solicitation. The protester's argument here is based upon Spectrum's analysis of publicly-available information concerning MTM's quoted product, and Spectrum's understanding of the FIPS validation process.

The record reflects that in evaluating MTM's quotation the agency found that MTM had responded "yes" to the requirement set forth in the RFQ's Vendor Solution Matrix that the "[c]ryptographic module in the product is NIST [National Institute of Standards] FIPS 140-2 compliant," and that MTM's quotation also expressly provided that MTM "uses a FIPS 140-2 Certified Cryptographic module in all products." Agency Report (AR), Tab 2, MTM Quotation, at 14.

Based upon our review of the record, the agency reasonably found that MTM's quotation provided the information requested by the solicitation, and agreed without exception to furnish a product in accordance with the terms of the solicitation. While Spectrum contends that the agency could not accept MTM's quotation representation without further investigation, an agency may accept a quotation's representation that indicates compliance with the solicitation requirements, where there is no significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether the offeror will or can comply with the requirement. Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4. Here, notwithstanding the detailed arguments by Spectrum as to why MTM's quotation will not provide a product that meets the FIPS 140-2 certification requirement, the record does not indicate there was any countervailing evidence reasonably known to the agency evaluators before award that should have created doubt that MTM would or could honor its quotation. Whether MTM actually delivers a product compliant with the terms of the solicitation is a matter of contract administration, which is for consideration by the contracting agency, rather than our Office. Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14 at 3. GAO does not review matters of contract administration under our bid protest function. 4 C.F.R. § 21.5(a) (2008); Nilson Van & Storage, Inc. B-310485, Dec. 10, 2007, 2007 CPD ¶ 224 at 4.

The protester also argues that the agency failed to properly evaluate the vendor's proposed prices, and as a consequence, to determine which quotation represented the best value to the government. Specifically, the protester complains that the agency calculated prices by considering only the prices on a per license basis, multiplied by an estimated 160,000 users, and the price for maintenance. Protest at 11. The protester argues here that the agency was required by certain Navy and Office of Management and Budget guidelines to include, in arriving at the vendor's evaluated prices, a "life-cycle cost analysis." Protest at 10-11; Protester's Comments at 19. The protester further argues that the consideration of such an analysis in the agency's price calculation and best value determination would be consistent with the terms of the solicitation. In this regard, the protester points out that as set forth in the solicitation, "the only exclusion from the competitive cost analysis were the training costs," and as such, the agency was obligated to consider any costs that were not specifically excluded by the terms of the solicitation. Protest at 12.

In our view, the agency's price evaluation was consistent with the terms of the solicitation. The RFQ stated with regard to the price factor that "[l]icense and maintenance prices will be considered on a comparative per seat basis with other prices received in response to this solicitation," and contained no provision for the evaluation of life cycle costs. RFQ at 3. Thus, the terms of the RFQ precluded the agency from conducting an evaluation that considered life cycle costs. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD ¶ 77 at 9; Mennen Med., Inc., B-246764 et al., Apr. 2, 1992, 92-1 CPD ¶ 341 at 8. The fact that the solicitation also included a provision stating that "[t]raining prices will be evaluated for compliance to the stated RFQ requirements but will not be included in the comparative analysis" cannot reasonably be read as requiring the consideration of every other aspect of cost associated with this program that could impact the agency. In this regard, to be reasonable, the interpretation of solicitation language must be consistent with the solicitation when read as a whole and in a manner that gives effect to all of its provisions, and Spectrum's assertions here simply are not reasonable. BellSouth Telecomm., Inc., B-258321, Jan. 6, 1995, 95-1 CPD ¶ 10 at 6. To the extent that the protester now contends that the solicitation should have provided for the consideration of life cycle costs either as part of the price evaluation or the best value determination, its protest is untimely. Sensis Corp., supra; Mennen Medical, Inc., supra; see Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

The protest is denied.¹

Daniel I. Gordon
Acting General Counsel

¹ Spectrum "formally" requested that our Office conduct a hearing under 4 C.F.R. § 21.7 of our Bid Protest Regulations, unless we "determined that any aspect of the protest should be sustained based solely on the written record," in which case "Spectrum would withdraw its request for such a hearing." Protester's Supp. Submission (Apr. 20, 2009) at 19. We did not grant Spectrum's request because the protester provided no reasonable basis for the necessity of a hearing and no legitimate reason for a hearing was apparent. The determination to hold a hearing is solely within the discretion of our Office. 4 C.F.R. § 21.7(a). As a general rule, we conduct hearings where there is a factual dispute between the parties which cannot be resolved without oral examination or without assessing witness credibility, or where an issue is so complex that developing the protest record through a hearing is more efficient and less burdensome than proceeding with written pleadings only. Absent evidence that a protest record is questionable or incomplete, this Office will not hold a bid protest hearing merely to permit the protester to orally reiterate its protest allegations or otherwise search for additional grounds of protest since such action would undermine our ability to resolve protests expeditiously and without undue disruption of the procurement process. Jack Faucett Assocs.--Recon., B-253329.2, Apr. 12, 1994, 94-1 CPD ¶ 250 at 4.