



Decision

Matter of: Controlled Systems

File: B-401208.2

Date: July 8, 2009

Brian S. Gocial, Esq., Blank Rome LLP, for the protester.
Maj. Carla T. Peters, Department of the Army, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that a quotation contains conflicting delivery terms and should have been found technically unacceptable because it did not conform to the solicitation's requirement for delivery to destination is denied, where the awardee's quotation included pricing for delivery to destination, the agency determined that the inclusion of a conflicting delivery term was a minor error, and the purchase order issued to the awardee provided for delivery to destination at the price quoted.

DECISION

Controlled Systems of Richardson, Texas, protests the issuance of an order to Mark C. Pope Associates, Inc. (MCPA) of Smyrna, Georgia, under request for quotations (RFQ) No. W9124L-09-T-0008, issued by the Department of the Army for the procurement, shipment and installation of ground power converters. Controlled Systems complains that MCPA's quotation was technically unacceptable because the quotation took exception to a material delivery term.

We deny the protest.

As amended, the solicitation sought quotations for 17 Hobart 180SX200 (or equal) power converters, to be provided on a "turnkey" basis at Fort Sill, Oklahoma. The RFQ required vendors to provide contract line item (CLIN) pricing for the power converters, delivery to Fort Sill, installation, and extended parts warranties. In this regard, the RFQ specifically stated that each item was to be delivered "FOB [freight on board]: Destination." Vendors were warned to provide pricing for each CLIN and that a vendor's "[f]ailure to complete and return all pages required may result in the

offer being determined nonresponsive and not considered for award of a contract.”
See RFQ at 3.

The Army received timely quotations from five firms, including MCPA and Controlled Systems. The Army selected MCPA’s quotation on the basis of its lowest evaluated price. MCPA did not use the solicitation’s CLIN pricing sheets, but nevertheless included pricing for each of the RFQ’s CLINs. One of MCPA’s priced CLINs was for providing “Freight FOB Destination” for 17 units. See MCPA Quotation at 2. The quotation also included, however, the term “FOB Point: Shipping Point.” Id.

Controlled Systems argues that MCPA’s quotation does not comply with a material term of the solicitation, and should have been found to be technically unacceptable. Specifically, the protester contends that by including the term--“FOB Point: Shipping Point” in its quotation--MCPA took exception to the solicitation requirement for “FOB Destination.”¹

A quote that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. See, Muddy Creek Oil and Gas, Inc., B-296836, Aug. 9, 2005, 2005 CPD ¶ 143 at 2.

Here, we find that MCPA’s quote did conform to the RFQ’s material terms and conditions. With respect to the delivery terms, although MCPA’s quotation stated that delivery would be “FOB Shipping Point,” the firm quoted a price for delivery, “FOB Destination” to Fort Sill, which was part of MCPA’s total price. Given that MCPA quoted complete pricing for the supply, delivery and installation of the power converters on a turnkey basis, as contemplated by the RFQ, we think that the Army reasonably concluded that the inclusion of the “FOB shipping point” term, which was inserted below the firm’s quoted prices and was not specifically associated with

¹ Controlled Systems also complains that MCPA’s quotation did not use the solicitation’s CLIN worksheets, but provided the CLIN pricing on MCPA’s own pages. Although the RFQ stated that “failure to complete and return all pages may result in an offer being determined nonresponsive,” we fail to see how the protester was prejudiced by the agency’s acceptance of MCPA’s CLIN pricing. See RFQ at 3. Controlled Systems does not argue that MCPA received any advantage in using its own pricing sheets to provide the CLIN pricing or that the protester was disadvantaged in any way.

any of the priced CLINs, was a minor error. The purchase order issued to MCPA by the Army provided for delivery to Fort Sill at the price quoted by MCPA. Agency Report, Tab 22, Purchase Order, at 4.

The protest is denied.

Daniel I. Gordon
Acting General Counsel