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**Comptroller General
of the United States**

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

Decision

Matter of: Kingdomware Technologies

File: B-407389

Date: December 4, 2012

LaTonya Barton for the protester.

Brian R. Reed, Esq., Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of request for quotations (RFQ) issued on a brand name or equal basis was proper where the RFQ failed to list any salient characteristics for use in evaluating equal products or identify a requirement that equal products be compatible with the brand name.

DECISION

Kingdomware Technologies protests the cancellation of request for quotations (RFQ) No. VA69D-12-Q-0244, issued by the Department of Veterans Affairs (VA) for emergency communication management software for VA's Federal Health Care Center (FHCC).

We deny the protest.

BACKGROUND

The RFQ was initially issued as a small business set-aside for emergency communication management software on a brand name or equal basis under the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding FSS Information Technology Equipment schedule 70 contracts. The RFQ identified the Live Process Enterprise subscription services system as the brand name and required vendors of equal items to provide detailed specifications showing that the item satisfied all the salient physical, functional, or performance characteristics of the brand name item. The RFQ, however, did not identify any salient characteristics. Rather, the RFQ provided the

following description, in the price schedule, of the requirements that the software system should satisfy:

LIVE PROCESS ENTERPRISE SUBSCRIPTION (Annual):

Includes access to planning, response and compliance features of the platform as well as extended contract information (ECI) capability, intended for emergency management purposes only. Includes implementation, training, updates, notification, support and maintenance, as detailed in the subscription agreement.

- One (1) each: Greater than 350 beds
- Eight (8) each: Clinics/Agencies Support Services:
 - Unlimited phone support during normal business hours (9:00am – 6:00pm EST) Monday through Friday
 - Critical phone support available 24/7 during emergency response activation.

RFQ at 4.

On August 27, after receiving information from the protester concerning the availability of service-disabled veteran-owned small business (SDVOSB) vendors, the agency reissued the RFQ as an SDVOSB set-aside under FSS procedures.

VA received only the protester's quotation in response to the RFQ. In its quotation, the protester stated that it was offering, as an equal product, the Business Notifier Solution (BNS) system, and provided a general description of how its product could satisfy the agency's requirements. See Kingdomware's Quotation at 5-6.

Kingdomware's quotation was provided to VA's FHCC (the end user) for its review. The FHCC informed the agency's contract specialist that Kingdomware's software system would not meet its needs and that only the brand name system would satisfy FHCC's requirements. Contracting Officer's Statement at 2. Specifically, FHCC stated that it is composed of a VA Medical Center and several Department of the Navy medical clinics; FHCC stated that the Navy's medical clinics already used the Live Process system and that it needed to have a system that was compatible with the Navy's system. Id. The contracting officer concluded that the RFQ should be canceled because the RFQ did not identify salient characteristics, such as the requirement for compatibility with the Live Process system. Id.

VA canceled the RFQ, and this protest followed.

DISCUSSION

Kingdomware contends that cancellation of the RFQ was not reasonable, because the RFQ did provide the salient characteristics, which Kingdomware states it satisfies.¹

A contracting agency need only establish a reasonable basis to support a decision to cancel an RFQ, Surgi-Textile, B-289370, Feb. 7, 2002, 2002 CPD ¶ 38 at 2, and may cancel no matter when the information precipitating the cancellation first arises, even if it is not until quotations have been submitted and evaluated. A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3. Where an agency states its requirements in terms of “brand name or equal,” the solicitation must also set forth the salient characteristics to identify for prospective offerors the essential features of the product which will meet the agency’s functional requirements. Adams Magnetic Prods., Inc., B-256041, May 3, 1994, 94-1 CPD ¶ 293 at 4. Failure of a solicitation to list the salient characteristics of the desired item improperly restricts competition by precluding potential offerors of equal products from determining what characteristics are considered essential for its item to be accepted; hence, cancellation of the solicitation is warranted. See T-L-C Sys., B-227470, Sept. 21, 1987, 87-2 CPD ¶ 283 at 1.

Contrary to Kingdomware’s arguments, the RFQ did not identify salient characteristics, but only a general description of the requirements that the software should satisfy. In particular, the RFQ did not apprise vendors of VA’s requirement that the equal software be compatible with the brand name.

The protester contends that the agency’s requirement for compatibility is merely a pretext to avoid issuing the purchase order to Kingdomware and argues that its software will be compatible with the brand name. Kingdomware also contends that VA is biased in favor of the brand name such that other products will not be fairly considered. See Comments at 6-7. Kingdomware, however, does not contend that the agency does not, in fact, need its software to be compatible with that of the Navy’s clinics.

There is no merit to these arguments. Kingdomware’s quotation, which only generally described its ability to perform the required services and stated that it was equal to the Live Process system, does not address the compatibility of its software with the brand name, presumably because the RFQ failed to identify this

¹ The protester also argues that the agency is required by the Veterans Benefits Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-28 (2006) (VA Act) to issue a purchase order to it as an eligible SDVOSB who submitted an acceptable offer at a fair and reasonable price. The VA Act, however, does not require the VA to purchase items that do not satisfy its needs.

requirement. To the extent that the protester alleges that the agency's requirement is a pretext to avoid award to Kingdomware or that the agency is biased in favor of the brand name, government officials are presumed to act in good faith. A protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof, which Kingdomware has not provided here. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8.

Because the RFQ failed to state salient characteristics that equal products must meet, VA had reasonable basis to cancel the solicitation.

The protest is denied.

Susan A. Poling
General Counsel