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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Richcon Federal Contractors, Inc.

File: B-403223

Date: August 12, 2010

Richard A. Kublius, Sr., for the protester.

Azine Farzami, Esq., Department of Agriculture, for the agency.

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

DIGEST

Agency properly rejected a quotation submitted by facsimile, where the solicitation incorporated a Federal Acquisition Regulation clause which expressly prohibited submission of quotations by facsimile.

DECISION

Richcon Federal Contractors, Inc., of Wellington, Florida, protests the rejection of its quotation by the Department of Agriculture, Forest Service, under request for quotations (RFQ) No. R3-6-10-007 for roofing services. The protester argues that the agency should have accepted its quotation, which was submitted by facsimile, notwithstanding the fact that the RFP incorporated a Federal Acquisition Regulation (FAR) clause that prohibited submission of quotations by this method.

We deny the protest.

The RFQ was issued on June 11, 2010, and sought quotations to replace the roof of the Glenwood shop in the Gila National Forest, New Mexico. Section L of the RFQ included the text of FAR § 52.252-1, which states in relevant part: “This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text.” Among the clauses incorporated by reference was “Instructions to Offerors—Competitive Acquisition,” which states, as relevant here, “[u]nless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages” FAR § 52.215-1(c)(1). The RFQ did not advise vendors that any method other than paper media was acceptable for submission of quotations.

Richcon submitted its quotation via facsimile on June 29, 1 day before the solicitation closing date. The agency rejected Richcon's quotation because it was delivered by facsimile, rather than on paper, as required under the RFQ. Contracting Officer's Statement ¶ 10.

Richcon argues that the Forest Service improperly rejected its quotation because the RFQ did not specifically state that quotes could not be submitted by facsimile. In this regard, the protester contends that the RFQ did not expressly include language that prohibited facsimile submission. As discussed above, however, the RFQ advised vendors that the clause at 52.215-1 was incorporated into the solicitation. It is a well-accepted principle of contract law that when an item is incorporated by reference into a contract or other document, it is not necessarily to bodily insert the text of the item into the contract or document. Staker & Parsons Cos., B-402404.2, Mar. 1, 2010, 2010 CPD ¶ 74 at 2-3; see also Northrop Grumman Info. Tech., Inc., 535 F.3d 1339, 1343-46 (Fed. Cir. 2008). On this record, we conclude that vendors were advised that facsimile submissions were prohibited, and that the contracting officer acted reasonably by rejecting Richcon's quotation.¹ See G.D. Searle & Co., B-247077, Apr. 30, 1992, 92-1 CPD ¶ 406 at 3.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

¹ Richcon also argues that, because its quotation was submitted the day before the solicitation closing date, the agency should have contacted the protester to advise that the quotation was unacceptable as submitted. We find no duty for the contracting officer to advise the protester that its quotation was improperly submitted. In any event, the contracting officer states that she was not aware that Richcon had submitted a quotation by facsimile until after the due date for receipt of quotations. Contracting Officer's Statement ¶ 13.