13401 Weinkopf Proc II

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194477 DATE: April 9, 1980

MATTER OF: Philips Business Systems, Inc. DLG01766

[Protest Alleging Breach of FSS Contract]

DIGEST:

1. RFQ for dictation equipment available under multiple-award Federal Supply Schedule (FSS) contracts which does not inform quoters of life cycle period to be used in cost evaluation, where it is clear that period would be same for all equipment, is defective and, under circumstances, did not permit fair and equal competition.

2. Issuance of delivery order to protester's competitor under defective RFQ does not result in breach of protester's FSS contract since protester, because of RFQ defect, was not entitled to award.

Philips Business Systems, Inc. (Philips) protests the issuance of an order to Lanier Business Products, Inc. (Lanier) for dictating equipment by the Veterans Administration Medical Center (VA), Murfreesboro, Tennessee. CLG01048 DLG04337

Philips, a dictation equipment contractor listed on the General Services Administration (GSA) multiple award Federal Supply Schedule (FSS), asserts that the VA breached its FSS contract (No. GS-00S-66770) by buying from Lanier. Philips alleges that it submitted the lowest quote and that the order should have been issued to it.

The VA states that it placed an order with Lanier after incorrectly evaluating Lanier's quote. Since the VA is a mandatory user of the FSS for dictation equipment, the agency, before issuing the order, requested quotations from available FSS contractors for dictation equipment. The request for quotations referenced a VA specification which stated that bidders shall inform the contracting officer of the type and quantities of

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telephone interfaces or "couplers" required so that the appropriate cost data may be obtained and utilized in determining the lowest priced system. In evaluating which contractor offered the lowest priced system, the agency added to Lanier's quotation the prospective cost of telephone company rental charges for six couplers (necessary for the use of Lanier's dictation system, but not Philips').

The determining factor in the evaluation was the time period for which telephone company rental charges were added to Lanier's quotation. The contracting officer concluded that Lanier was low based upon a 5-year life expectancy for this equipment. The VA reports that the contract file does not indicate why a 5-year period was selected and that the contracting officer has since resigned. Although Lanier contends that the 5-year period was appropriate, the VA states that the contracting officer should have used a life expectancy of 10-years because the VA Supply Catalog lists a 10-year life expectancy for dictation equipment. (As VA points out, the cost advantage shifts to Philips during the sixth year and increases during the seventh through tenth years).

The Federal Property Management Regulations require the VA, as a mandatory user of the FSS, to order the dictating equipment which meets the VA's minimum needs at the lowest delivered price available under the FSS, 41 C.F.R. § 101-26.408-2 (1979), and also permit user agencies to evaluate factors such as overall maintenance costs in selecting a contractor. 41 C.F.R. § 101-26.408-3. An agency may also evaluate life-cycle costs, see, e.g., Dictaphone Corporation, B-193614, June 13, 1979, 79-1 CPD 416, so long as the projected costs are reasonable and quoters have adequate notice that the evaluation will include such costs. Eastman Kodak Company, B-194584, August 9, 1979, 79-2 CPD 105.

Here, the request for quotations (RFQ) referenced a specification which suggested that the cost evaluation would take into account the useful life of the offered equipment, at least if telephone company rental charges would be involved. The RFQ did not, however, provide any indication of what period the VA would use when evaluating the useful life of the dictating equipment.

We have often pointed out the need for agencies to provide in their solicitations a clear statement of the evaluation factors to be utilized so that fair and intelligent competition can be achieved. See, e.g., Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 368; Frontier Broadcasting Co. d/b/a Cable Colorvision, 53 Comp. Gen. 676 (1974), 74-1 CPD 138. When life cycle costs are to be evaluated, we believe it is appropriate for the solicitation to indicate not only that fact, but also, in most cases, the useful life period that will be utilized in the evaluation. See, e.g., Computer Machinery Corporation, 55 Comp. Gen. 1151 (1976), 76-1 CPD 358; 52 Comp. Gen. 653 (1973); 36 Comp. Gen. 380 (1956); Hasko-Air, Inc., B-192488, March 19, 1979, 79-1 CPD 190, all involving solicitations which set forth life cycle evaluation periods; see also United Computing Systems, Incorporated, B-192298, July 5, 1979, 79-2 CPD 8. Although those cases did not involve multiple award FSS contracts, we believe the life cycle period should be indicated in RFQs when competitive quotations are solicited prior to placement of an order under a FSS contract; while equipment prices are generally fixed by the FSS, individual vendors, to be more cost competitive under the general rules established for a particular purchase, can vary both the equipment offered (provided that it meets the agency's needs) and trade-in allowances. See United Computing Systems Incorporated, supra; Lanier Business Products, Inc., B-196189, B-196190, February 12, 1980, 80-1 CPD ____.

The confusion and possible prejudice that may be engendered when the evaluation period is not established in the solicitation is illustrated here. The agency's Supply Catalog, a publication intended for internal use, lists a 10-year useful life for dictating equipment, and the Philips quotation explicitly anticipates a 10-year useful life. On the other hand, the contracting officer, in the face of these documents, used a 5-year useful life period, and Lanier asserts that it assumed a 5-year life expectancy because "it is well known in the industry that because of the abnormal utilization of dictating systems in a hospital environment the life expectancy is approximately 5-years." Lanier further states that it relied on that assumption in offering the VA its "internal PBX system," but that had it known of or assumed a 10-year life expectancy, it would have offered a "direct connect inter-face system which would have eliminated most of the telephone company's cost ***." Neither the VA nor Philips has rebutted Lanier's assertions.

Under these circumstances, we must conclude that the RFQ did not permit fair and equal competition. Thus, while the VA believes its contracting officer should have relied on the VA Supply Catalog and evaluated Philips as the low quoter, we find that no award properly should have resulted from this RFQ because all quoters were not aware of how useful life would be evaluated. Consequently, we sustain the protest to the extent that award to Lanier should not have been made. No remedial action is possible, however, since delivery has been completed. Moreover, since we expressly do not conclude that award should have been made to Philips, we have no basis for agreeing with Philips that the issuance of a delivery order to Lanier constituted a breach of Philips' FSS contract.

We are bringing this matter to the attention of the Administrator of Veterans Affairs.

Milton J. Socolar

For The Comptroller General
of the United States