



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AZTEK, Inc.
File: B-236612
Date: December 6, 1989

DIGEST

An announcement in the Commerce Business Daily (CBD) of plans to procure an item under a nonmandatory automatic data processing schedule contract is a device to test the market to determine whether the government's needs will be met at the lowest overall cost by procuring from the schedule. The agency is not "locked into" all the specific features of the advertised product but may generally purchase functionally equivalent products that do not contain features of the product synopsized in the CBD.

DECISION

AZTEK, Inc., protests the issuance of delivery order No. DAAC09-89-F-2779 by the Sacramento Army Depot. The protester contends that the items offered by the awardee, Pansophic Graphics Systems, did not contain the features and characteristics advertised in the agency's Commerce Business Daily (CBD) announcement.

We deny the protest.

On March 16, 1989, the agency received two purchase requests from the computer graphic facility at Fort Leonard Wood, Missouri, for computer graphic systems consisting of an 80286-based personal computer (with 42MB hard disk and an operating system with multi-task windowing), 35-mm film recorder, thermal transfer color printer and software. On April 18, 1989, the agency placed a notice in the CBD of its intent to place an order against the protester's General Services Administration (GSA) schedule contract No. GS00K89AGS5600 to purchase the required systems and invited other firms that might be able to provide the required items to identify themselves and provide supporting technical and pricing information.

The agency received five responses on June 5, including one from the protester and one from the awardee; the protester offered a system complying with the CBD notice, but the agency, due to informational deficiencies in the responses, was unable to determine the acceptability of the other four responses. On June 7, the agency advised the firms that the requirement was being combined with another previously synopsisized requirement and invited them to submit proposals for the entire requirement of three systems; the agency published a notice to this effect in the CBD of June 15.

The agency received revised proposals and forwarded them to its technical evaluators for review. In reviewing these proposals, the agency evaluator determined that the agency could not justify a need for a 42MB hard disk, which had appeared in the CBD notice; similarly, he determined that a requirement for multi-tasking could not be justified. The technical evaluator advised the contracting officer that the low cost response from Pansophic was technically acceptable, although its proposed configuration (including a 40MB hard disk) did not fully conform to that synopsisized in the CBD. Pansophic proposed a price of \$103,653, and the protester proposed a price of \$185,169, the highest received.

Since the awardee's response was the lowest received, the agency decided to issue a delivery order against Pansophic's GSA schedule contract. On July 17, without further synopsis in the CBD, the agency canceled the original purchase requests and issued new purchase requests for equipment with requirements conforming to Pansophic's items; the agency issued a delivery order to the awardee on August 4.^{1/}

The protester filed this protest on August 17, alleging that the Pansophic proposal did not meet the "salient characteristics" cited in the CBD announcements. The protester essentially argues that the agency advertised an intent to purchase the system from AZTEK, designating certain features offered in the AZTEK system as requirements; the protester argues that the agency cannot redefine its requirements and accept a lesser system without re-advertising and allowing AZTEK and other potential firms to submit proposals based on the agency's reduced requirements.

^{1/} On August 7, the protester submitted an unsolicited alternate proposal at a price of \$149,532. This alternate proposal was not evaluated since it was received after award.

The use of GSA nonmandatory schedules to acquire automated data processing resources is governed by the Federal Information Resources Management Regulation (FIRMR), 41 C.F.R. ch. 201 (1988). The FIRMR permits an agency to place an order against GSA nonmandatory automated data processing schedule contracts like AZTEK's or Pansophic's when certain conditions are met. One condition is that the agency synopsize in the CBD its intent to place an order against a nonmandatory schedule contract. The CBD announcement required before an agency makes a purchase from a GSA schedule must include sufficient information to permit the agency to determine from the responses whether ordering from the GSA schedule or preparing a solicitation document will meet its needs at the lowest overall cost. FIRMR, 41 C.F.R. §§ 201-32.206(f)(2),(g). This requires the agency to assure that available alternatives are brought to the agency's attention. See Racal-Milgo, B-225681, May 5, 1987, 87-1 CPD ¶ 472. However, because the CBD synopsis is used to test the market, it need not describe, for example, the evaluation factors to be used by the agency in the detail required in a solicitation. TriCom, Inc., B-220590, Jan. 15, 1986, 86-1 CPD ¶ 47.

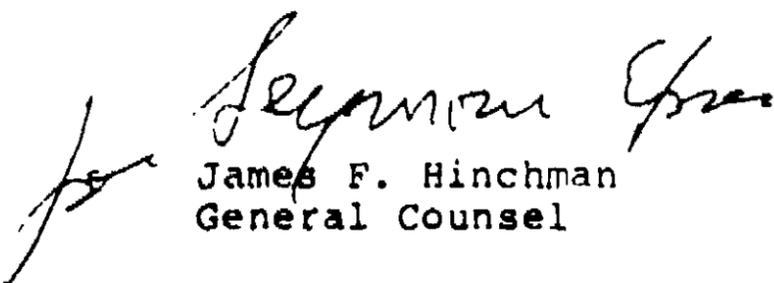
Here, the agency announced its intent to purchase computer graphics systems under the terms of the protester's schedule contract and described the proposed system based on the protester's product. However, a CBD announcement is not the equivalent of a formal solicitation and, in our view, the agency is not obligated to purchase products with the specific "salient characteristics" (as characterized by the protester) listed in the CBD announcement so long as the CBD announcement generates proposed available alternatives from the market to permit the agency to reasonably determine whether buying off the schedule or preparing a solicitation will meet its needs at the lowest overall cost. In short, the agency is not "locked into" all the specific features of the advertised product but may generally purchase functional equivalents that do not contain features of the products synopsized in the CBD. Cf. Kardex Sys., Inc., B-225616, Mar. 12, 1987, 87-1 CPD ¶ 280. The agency here received five responses and reasonably determined to purchase from the schedule contract of another firm which offered the lowest cost. The protester knew or should have known that it could have proposed alternate systems that were functionally equivalent but failed to do so at the lowest cost.

Moreover, we note that the record before us contains no evidence that the protester could have submitted a lower-price offer than did Pansophic, even if it had been advised that the agency would have accepted a system with less

capability than advertised. The agency concedes that the protester could have submitted a lower offer if it had omitted multi-tasking from its software, but the protester's own submissions show that its offer without multi-tasking would have still been higher than the awardee's. Furthermore, we note that on August 7, 1989, the protester, as stated above, submitted an alternate proposal, which the agency states was technically unacceptable because it offered a printer that used 200 pixels per inch instead of the required 240 pixels per inch, which offers greater graphics resolution.

In response to a request by our Office that it establish the existence of prejudice resulting from the agency's actions in this case, the protester has provided our Office with a second alternate offer, slightly less expensive than the Pansophic contract, but premised on use of the same 200 pixel per inch printer already considered technically unacceptable. The agency advises us that, in fact, the only acceptable printer on the protester's GSA schedule is significantly more expensive than the one offered in its alternate proposals, and that the protester could not therefore have offered a lower price had it been advised of the agency's relaxed requirements and allowed to submit an offer.

The protest is denied.



James F. Hinchman
General Counsel