

Matter of: Baxter Healthcare Corporation

File: B-259811.4

Date: September 28, 1995

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DIGEST

1. Protest that terms of solicitation regarding electronic data interchange (EDI) improperly contravene the Federal Acquisition Computer Network (FACNET) provisions of the Federal Acquisition Streamlining Act of 1994 (FASA), 41 U.S.C.A. § 426, 426a (West Supp. 1995), is denied where the record shows that the solicitation is not intended to procure an EDI system for the purposes of FACNET, and where the agency is not required to procure these items through a FACNET system.
2. Protest that terms of solicitation regarding EDI render the solicitation ambiguous is denied where the record shows that the solicitation contains no genuine ambiguities; a contracting agency is not required to draft specifications in such detail as to completely eliminate any risk or remove every uncertainty from the mind of every prospective offeror.

DECISION

Baxter Healthcare Corporation protests the terms of request for proposals (RFP) No. DLA120-93-R-0587, issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC) to obtain a prime vendor of medical/surgical items. Baxter contends that the terms of a solicitation amendment regarding electronic data interchange (EDI) are both illegal and ambiguous.

We deny the protest.

BACKGROUND

DPSC's Directorate of Medical Materiel has established a prime vendor program for medical supplies under which items now purchased locally by participating medical treatment facilities will be purchased through regional prime vendors. These prime vendors will be responsible for delivering goods produced by various suppliers to medical treatment facilities upon receipt of their order. In essence, DPSC is procuring a stocked warehouse and distribution facility to provide medical and surgical items, when needed, to government medical facilities, replacing existing DPSC depots for such items. DPSC has divided the country into 22 geographic regions and anticipates awarding a contract to each of two prime vendors per region--one for medical/surgical items and one for pharmaceuticals.

Each prime vendor will be responsible for furnishing participating hospitals with the majority of their requirements for items listed on applicable distribution and pricing agreements (DAPA). These agreements between the agency and product manufacturers allow the prime vendors to distribute the manufacturers' products to participating medical treatment facilities at prices not greater than those set forth in the agreements.¹ Prime vendors are paid for each DAPA item ordered and delivered, plus their distribution fee, and are required to establish "charge-back" arrangements with DAPA holders.²

This solicitation, issued August 11, 1993, is for a prime vendor contract for medical/surgical items in the Lone Star Region, comprised of Texas, Oklahoma, and New Mexico. The agency received six offers by the September 14 closing date, but amendment No. 0001, issued July 29, 1994, substantially revised the statement of work and other key areas of the solicitation.

The amended solicitation anticipated the award of a fixed-price requirements contract for 1 base year, with four 1-year options. The estimated value of the annual requirements was \$27,500,000. The RFP advised that award

¹The program also allows the agency to issue indefinite delivery contracts for specific products to be distributed by the prime vendors, with the same requirements as the DAPAs.

²In this solicitation, prices will be evaluated by multiplying the offeror's distribution percentage against the annual estimated requirements for each period, and adding the resulting dollar figure for each year to arrive at a total evaluated price.

would be made to the offer that was most advantageous to the government, price and technical quality considered. Among the technical evaluation factors was a consideration of the offerors' electronic order entry systems/electronic data interchange (EOE/EDI), described further below.

Discussions were conducted with the four offerors whose proposals were in the competitive range, including Baxter, and best and final offers (BAFO) were submitted. The evaluation of BAFOs resulted in an award to Owens & Minor on December 2. In one of two protests filed with our Office by Baxter at that time, the firm argued that DPSC had improperly ignored the solicitation's EDI requirements in evaluating the proposals. Because the agency agreed to take corrective action by, in part, clarifying its EDI requirements, we dismissed the protests as academic on April 19, 1995. DPSC reopened discussions and issued amendment No. 0005³ which revised the solicitation's EDI requirements in the manner described below.

Since each participating medical treatment facility is responsible for ordering its own medical/surgical items from the prime vendor, offerors are required to have in place an electronic ordering system with a price and product catalog of DAPA items that can receive and confirm orders. The electronic transmission of such business documents is an EDI transaction and takes the form of transaction sets.⁴ For the two parties to communicate, each party's system must be capable of transmitting and receiving the same transaction set standard. The federal government has adopted the ANSI X12 transaction set standards for EDI systems within the federal government. Federal Information Processing Standards Publication 161-1.

The government EDI systems involved in the prime vendor program use a conversion package referred to as the prime vendor interface in order to transmit and receive ANSI X12 transaction set standards. Offerors must provide DPSC with information concerning their electronic ordering systems to facilitate the establishment of a direct prime vendor interface between the contractor's electronic ordering system and each ordering office's computerized materials management system. Offerors not previously awarded a prime vendor contract must describe the formats of their order and order acknowledgment, as well as the ANSI X12 transaction

³Amendment Nos. 0002 through 0004 are not at issue here.

⁴A transaction set is the collection of data that is exchanged in order to convey meaning between the parties engaged in EDI and is composed of the specific group of segments that represent a common business document.

sets for these documents (or proprietary transactions used by their electronic ordering system). Offerors must also submit an electronic invoice for each delivery order to DPSC in accordance with ANSI X12 standards, transmitting it through a third-party network known as a value added network. Each trading partner--the prime vendor and the government--is responsible for the costs of its third-party network.

Amendment No. 0005 states that:

"The Prime Vendor shall implement, within . . . 6 months of award, ANSI X12 standards for [EDI] for the following business documents: Purchase Orders . . . , Order Confirmation . . . , Price Sales Catalog . . . , and Invoicing. . . . ANSI X12 standards are only required for transactions between trading partners. A prime vendor that can transmit business documents in ANSI X12 format for all facilities using the prime vendor interface meets the requirements of the statement of work. If the prime vendor interface is not being used, the transmission of business documents in ANSI X12 format is not required."

Baxter filed this protest prior to the due date for submission of revised proposals. The firm primarily argues that the terms of amendment No. 0005 improperly contravene the Federal Acquisition Computer Network (FACNET) provisions of the Federal Acquisition Streamlining Act of 1994 (FASA), 41 U.S.C.A. § 426, 426a (West Supp. 1995). Baxter also contends that the terms of the amendment render the solicitation ambiguous.

DISCUSSION

FACNET refers to a government-wide electronic commerce/EDI systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access. 41 U.S.C.A. § 426(a), (b)(3); Federal Acquisition Regulation (FAR) § 4.501 (FAC 90-29). FACNET will create an electronic marketplace whereby contracting agencies can post notices of and receive responses to solicitations; post notices of contract awards; and issue orders where practicable, 41 U.S.C.A. § 426(b)(1). Private sector users will be able to access notice of solicitations; retrieve, review, and respond to solicitations; receive orders; and access information on contract awards. 41 U.S.C.A. § 426(b)(2). The focus of the FACNET provisions is on procurements falling within the range for simplified acquisition

procedures; that is, procurements of more than \$2,500 and not more than \$100,000 in value. 41 U.S.C.A. § 426a.

The parties do not dispute that the amendment's language--that offerors able to transmit business documents in ANSI X12 for those facilities using the prime vendor interface meet the solicitation's ANSI X12 requirements--means that so long as an offeror's mainframe computer can send and receive ANSI X12 documents, the offeror meets the requirement. When an offeror meets this requirement, it need not provide ANSI X12 software to the government. DPSC explains that while most of the ordering facilities in the Lone Star Region will be using the prime vendor interface, two facilities will enter orders directly into the prime vendor's mainframe EOE system. In this latter situation, there is no need to require ANSI X12 compliance because the transaction set is being processed within a single system that, unlike the prime vendor interface situation, requires no conversion.

Baxter argues that unless offerors are required to provide ANSI X12 software to the government to enable the medical treatment facilities to communicate in FACNET's electronic marketplace, medical treatment facilities will be unable to place orders with, or solicit proposals from, other vendors. Baxter also claims that without the software other vendors will be unable to learn of the government's needs, limiting competition in violation of FASA.

In our view, Baxter's protest is based on a misunderstanding of the nature of this procurement. DPSC is not using this solicitation to procure, in whole or in part, its FACNET system, or any simplified acquisition procurement system such as that envisioned by FACNET. Instead, this solicitation anticipates award of a multimillion dollar requirements contract⁵ for the services of a prime vendor who will be responsible for supplying medical treatment facilities with their medical/surgical item requirements under pre-negotiated price agreements. The fact that this solicitation contemplates EDI communication between the government and the prime vendor does not make it subject to the FACNET provisions, and the fact that the delivery orders contemplated under this contract will likely be under \$100,000 does not compel us to decide that DPSC is here

⁵A requirements contract provides for filling all actual purchase requirements of designated government activities for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor. FAR § 16.503(a).

acquiring a "small purchase" system.⁶ Further, Baxter's continued assertions that the contract resulting from this solicitation must allow vendors to fully compete for the items required is puzzling since this contract constitutes the competition here, not some later action. After this contract is awarded, the supplier, the goods, and the prices will be established.

To the extent that Baxter is arguing that all of the orders within the scope of this procurement should be under the FACNET system, we point out that FASA does not require that any given procurement proceed under FACNET. See FAR § 4.502(a) (FAC 90-29). More important, the delivery orders for items needed under a requirements contract such as this one are not separate purchases subject to competition, but orders within the scope of the contract. Nothing in FASA requires contracting agencies to break requirements contracts down into individual purchases for the purpose of competition through the FACNET system.

We now turn to Baxter's argument that the terms of amendment No. 0005 render the solicitation ambiguous.

As a general rule, a contracting agency must give offerors sufficient information in a solicitation to enable them to compete intelligently and on a relatively equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. There is no requirement that an agency draft specifications in such detail as to completely eliminate any risk or remove every uncertainty from the mind of every prospective offeror. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451. Offerors are expected to use their business judgment and professional expertise to determine the most efficient and effective method of meeting the government's requirements. McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121. The mere allegation that a solicitation is ambiguous does not make it so, RMS Indus., B-247465; B-247467, June 10, 1992, 92-1 CPD ¶ 506; a solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations when the solicitation is read as a whole. Astro-Valcour, Inc., B-257485, Oct. 6, 1994, 94-2 CPD ¶ 129.

We have considered all of the protester's allegations and, based on our review of the record, conclude that Baxter has failed to demonstrate that the specifications contain any genuine ambiguities. In our view, the solicitation

⁶Thus, Baxter's reliance on a Department of Defense memorandum placing restrictions on funding for non-standard small purchase systems is misplaced.

reasonably describes the work to be performed and provides information which is adequate to enable all firms, including Baxter, to compete intelligently on an equal basis. C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279. We discuss a representative sample of the protester's arguments below.⁷

Baxter argues that the amendment is ambiguous because it requires the prime vendor to implement ANSI X12 standards within 6 months but also states that if the prime vendor interface is not being used, the transmission of business documents in ANSI X12 format is not required.

The amendment actually states that:

"The Prime Vendor shall implement, within 6 months of award, ANSI X12 standards for [EDI] for [four] business documents. . . . A prime vendor that can transmit business documents in ANSI X12 format for all facilities using the prime vendor interface meets the requirements of the statement of work. If the prime vendor interface is not being used, the transmission of business documents in ANSI X12 format is not required."

Our reading of the amendment shows that while the first sentence requires the prime vendor to implement ANSI X12 standards within 6 months, the second sentence clarifies the requirement by explaining that prime vendors need only be capable of transmitting documents in ANSI X12 format for all facilities using the prime vendor interface, for reasons explained above. The final sentence, despite Baxter's complaint to the contrary, simply underscores the clarified requirement, which we do not find ambiguous. Similarly, Baxter's argument that the RFP does not clearly define the term "trading partner" is belied by paragraph 5.p. of section C, which specifically defines trading partners as the prime vendor and the government.

Baxter's contention that the amendment creates an ambiguity with respect to section M of the solicitation is also without basis. Because, as discussed above, the amendment indicates that offerors are not required to provide ANSI X12

⁷Given our conclusions above as to the legality of the amendment's terms, we decline to address several of Baxter's allegations which amount to mere reiterations of its contention that the FACNET provisions govern this procurement. Likewise, we need not address Baxter's questions concerning perceived ambiguities between the terms of amendment No. 0005 and the language found in paragraph 3(p) of RFP clause 52.215-9P12, since amendment No. 0007 deleted this clause from the solicitation.

software to the government, Baxter contends that section M's statement that offerors will be evaluated based on their ability to provide such software is ambiguous. However, section M, as amended, does not mention ANSI X12 software. Rather, it advises that proposals will be evaluated to determine if offerors can adequately meet the solicitation requirements for EOE/EDI capability. We see no ambiguity here.⁸

Baxter also argues that the amendment does not describe how offerors that are not ANSI X12 compliant for 6 months, as permitted by the solicitation, will process orders during that period, or how orders will be processed for those medical treatment facilities not using prime vendor interfaces. DPSC's response to both questions is that, to be considered for award, offerors must have an electronic order entry system in place--either an ANSI X12 compliant system or their own proprietary system--and that offerors that are not initially ANSI X12 compliant may use their own electronic order entry systems, as described in the solicitation.

As for Baxter's contention that the amendment does not describe the contractor's obligations to provide ANSI X12 business documents to facilities not currently using a prime vendor interface but which later decide to do so, and to facilities now using a prime vendor interface but later deciding not to do so, the agency explains, and we agree, that amendment No. 0005 addresses the contractor's obligation when an ordering activity is using a prime vendor interface, regardless of when the ordering activity begins to do so. In any event, contracting agencies are not required to account, in a solicitation's specifications, for every possible eventuality that might arise during the contract period. See A&C Bldg. and Indus. Maintenance Corp., supra.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel

⁸Likewise, we disagree with Baxter's unsupported argument that the language in amendment No. 0005 somehow deletes the requirement for value-added network use; nothing in the amendment prohibits such use, and paragraph 5.p. of section C specifically requires all electronic invoices to be transmitted through a value-added network.