



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Williams-Trane Company, Inc.

File: B-283522

Date: November 22, 1999

John B. Denniston, Esq., and Thomas W. Krause, Esq., Covington & Burling, for the protester.

Joseph A. Gonzales, Esq., and Larry E. Beall, Esq., U.S. Army Corps of Engineers, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that under request for quotations, issued as a simplified commercial acquisition with a late quotation provision, agency improperly permitted several vendors to clarify and revise submissions after due date, in order to enable products offered to satisfy the solicitation's technical requirements, is denied where protester's submission establishing its technical acceptability was also received by the agency after the due date.

DECISION

Williams-Trane Company, Inc. protests the issuance of a purchase order to RNK International under request for quotations (RFQ) No. DACW01-99-T-0145, issued by the U.S. Army Corps of Engineers for the purchase of air conditioning equipment for installation at the Jim Woodruff Powerhouse located in Chattahoochee, Florida. The protester argues that additional technical information and revisions provided by RNK after the due date for receipt of quotations constituted an untimely modification that should not have been solicited or accepted by the agency.

We deny the protest.

The RFQ, issued on May 21, 1999, was conducted as a commercial item procurement under simplified acquisition procedures. Contracting Officer's Statement at 1. The RFQ contained the Federal Acquisition Regulation (FAR) provision entitled "Instructions to Offerors – Commercial Items," which requires vendors to provide a

technical description of items offered in sufficient detail to evaluate compliance with the solicitation requirements through the submission of product literature or other documents if necessary. FAR § 52.212-1(b)(4). Quotations and descriptive technical information were due by June 11, 1999. FAR § 52.212-1(f) provides that late offers or modification of offers generally will not be considered.

The protester states that its representative spoke with the contract specialist on June 11, prior to the time set for receipt of quotations, and was advised that the descriptive literature and technical information required by the RFQ was not required to be submitted at the same time as the rest of the quote. Affidavit of Protester's Sales Manager, Oct. 1, 1999, at 2. According to the contract specialist, he advised the protester to submit its signed and dated offer and to furnish the technical data as soon as possible. The contract specialist maintains that he did not advise the protester that the due date and time for quotations had been extended or waived. Affidavit of Contract Specialist, Oct. 8, 1999, at 1.

The following four quotations were received by June 11:

Williams-Trane	\$79,084
RNK	\$66,000
Ferguson Enterprises	\$45,094
AC Industrial, Inc.	\$44,051

Contracting Officer's Statement at 1.

The quotations submitted by RNK, Ferguson and AC were accompanied by the required technical information. The protester submitted its price quotation on June 11, but failed to submit any technical information describing its proposed equipment until June 15. The protester maintains that it submitted the technical data without further conversation with the agency. Affidavit of Protester's Sales Manager, supra. However, the agency reports that it contacted the protester and left several messages to remind the protester that the technical data had not been received. Affidavit of Contract Specialist, supra.

After evaluating the technical/descriptive information provided by the vendors, on June 24, the evaluators recommended that the quotes from Ferguson and AC be rejected for failure to demonstrate that their proposed equipment met the technical requirements. Agency Report (AR), Tab D. RNK's quote met the requirements of the RFQ with the exception of the condensing unit. Id. The equipment proposed by the protester met the RFQ specifications. Id.

After reviewing the evaluators' comments, the agency decided that it was in the best interest of the government to contact Ferguson, AC and RNK to discuss the deficiencies noted by the evaluators, and to afford them an opportunity to submit revisions to their technical information by June 30. Contracting Officer's Statement at 2. These vendors were not allowed to change their prices. AR at 3. No additional

information was requested from the protester because by June 24 its submissions had established compliance with the RFQ technical requirements. After evaluation of the additional information submitted by Ferguson, AC and RNK, the agency determined that Ferguson and AC still did not demonstrate compliance with the specifications. RNK's revision corrected the deficiencies noted in the original submission by proposing a slightly different mix of equipment that met the requirements. Since RNK submitted the lowest priced technically acceptable quotation, it was determined to be in the best interest of the government to make award to RNK. After receiving notification of the award, Williams-Trane filed an agency-level protest on July 19. On August 19, the agency denied the protest and issued the purchase order to RNK on August 20. Williams-Trane filed this protest with our Office on August 26.

Williams-Trane's objection to the agency's decision to accept RNK's post-closing modification of its quote is without merit. The protester takes the position that, since this RFQ contained a late quotation provision and substantial evaluation had taken place, RNK's revised quote, which actually modified its offered product, was a late quotation that should not have been accepted. While the agency's acceptance of late submissions was inconsistent with the late quotation clause that was included in the solicitation, all of the vendors, including the protester, benefited similarly from the agency's flexibility in this regard. As outlined above, the protester submitted the descriptive data that demonstrated the acceptability of its product after the date set for receipt of quotations.¹ Thus, the protester was afforded an opportunity to make its otherwise noncompliant quote technically acceptable through the late submission of technical material, in derogation of the late quotation clause in the solicitation. Since it had already accepted the late submission of technical information by the protester, we find unobjectionable, in the context of the use of simplified acquisition procedures, the agency's attempt to enhance competition through the acceptance of additional technical information and revisions to permit the other vendors to establish compliance with the specifications. Simplified acquisition procedures emphasize efficiency rather than formal procedure and, when using them, agencies have considerable discretion in their approach, as long as it promotes competition to the maximum extent practicable. FAR § 13.106-2(b)(2); Cromartie and Breakfield, B-279859, July 27, 1998, 98-2 CPD ¶ 32 at 2. Here, the vendors benefited similarly from the agency's willingness to accept late submissions, hence the protester was not prejudiced by the agency's acceptance of late technical submissions.

In its comments filed with our Office on October 4, the protester complains about the agency's use of simplified acquisition procedures because there was nothing in the RFQ that indicated to vendors that simplified acquisition procedures were to

¹While the protester maintains that it received oral advice that the descriptive information could be submitted at a later date, oral advice contrary to the terms of a solicitation does not bind the government and an offeror relies on such advice at its own risk. Systems 4, Inc., B-270543, Dec. 21, 1995, 95-2 CPD ¶ 281 at 2.

govern the procurement. This issue is untimely raised. In its initial protest submission, the protester specifically stated that this acquisition was conducted using simplified acquisition procedures. Moreover, the agency, in its August 20 response to the agency-level protest, stated that simplified acquisition procedures were used. Protests that are not based upon alleged solicitation improprieties must be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1999). The protester first objected to the agency's failure to inform vendors that simplified acquisition procedures were applicable to this procurement in its October 4 comments to the agency report, more than 10 days after it learned the basis of protest. Therefore this protest basis is untimely.²

As for the protester's argument that the agency failed to follow the procedures in FAR § 15.306 by holding discussions with three of the vendors but not with Williams-Trane, this issue is also untimely. The protester knew from the agency's August 20 denial of its agency-level protest that discussions had been held with the other three vendors and first protested this more than 10 days later when it filed its comments with our Office on October 4.

The protest is denied.

Comptroller General
of the United States

²Moreover, the agency points out that there is no FAR provision that requires agencies to announce in an RFQ that simplified acquisition procedures will be used, and the protester has failed to reference any such provision. We are unaware of any such notice requirement and, on the contrary, the FAR specifically provides that agencies may use simplified acquisition procedures when purchasing commercial items and requires agencies to use simplified acquisition procedures to the maximum extent practicable for the acquisition of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options. FAR § 12.203.