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Decision

Matter of: Alion Science & Technology Corporation

File: B-294159; B-294159.2

Date: September 10, 2004

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Scott M. McCaleb, Esq., Kevin J. Maynard, Esq., and Derek A. Yeo, Esq., Wiley Rein & Fielding, for Anteon Corporation, an intervenor.
Lee W. Crook, III, Esq., and Erica V. Stigall, Esq., General Services Administration, for the agency.
Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where solicitation indicated that agency desired quotations not only for eight enumerated positions, but also for unspecified additional support and where vendors provided technical and price quotations for widely varying levels of additional support; contracting officer had apparently intended additional support to be addressed in technical, not price, section of quotations. Record indicates that solicitation may not accurately reflect agency's needs and its lack of clarity resulted in uncertainty about the total cost of each vendor's approach.

DECISION

Alion Science & Technology Corporation protests the issuance of a task order to Anteon Corporation by the General Services Administration (GSA) under request for quotations (RFQ) No. PPM5740005T6 for the United States Army stability and support operations training program at Fort Sam Houston, Texas.¹ Alion argues that the contracting officer's evaluation of vendors' quotations was inconsistent with the terms of the RFQ, and that Alion's quotation represented the best value. Alternatively, Alion argues that the RFQ did not accurately state the Army's staffing needs.

¹ GSA conducted this acquisition on behalf of the Army.

We sustain the protest.

The RFQ sought quotations from ten named vendors² holding GSA Federal Supply Schedule (FSS) contracts on the Management, Organizational and Business Improvement Services (MOBIS) schedule, also known as “Schedule 874.” RFQ amend. 2. GSA anticipated issuing a single time-and-materials task order to the successful vendor for a 1-year base period and three 1-year option periods, for a total of 4 years.

For personnel requirements, the RFQ contained the following:

6.1. Eight in-house full-time contract personnel are required and will be housed within Warfighter Division, G3-Training, HQs Fifth US Army, Fort Sam Houston, Texas. The in-house contract personnel will be called the Balkans Support Team. Additional Personnel necessary to support each unit’s training events at the exercise location (to be determined) will also be required.

RFQ § 6.1.

The requirements for each of the eight Balkans Support Team personnel were set forth in eight separate subsections of the RFQ §§ 6.1.1 through 6.1.8, respectively. Immediately after the description of the eight Balkans Support Team personnel, the RFQ described “additional personnel” as follows:

6.1.9 Additional personnel: In addition to the eight in-house full time contracted employees, the contractor will provide personnel necessary to support each unit’s training events at the exercise location (to be determined). One of these will be the Joint Military Affairs SME [subject matter expert] brought on-board by the contractor for specific events only. The Government will typically provide 30 days notice of increase or decrease in personnel numbers and qualifications; however, some staff modifications, in response to rapidly evolving requirements, may necessitate resolution of short-term and permanent staffing issues in as little as 48 to 96 hours.

6.1.10 The contractor shall provide a project manager who shall be accessible to the Government during normal working hours and [on] an extended work schedule basis during training execution. . . .

² According to the post-award debriefing provided to the protester, “GSA solicited 11 vendors.” Agency Report (AR), Tab 11, E-mail Debriefing from Contracting Officer to Protester (May 28, 2004).

6.1.10.1 In addition to the in-house contractors and if so required, the contractor shall be responsible for overall management and coordination of matters pertaining to contract requirements. Conduct individual analysis and participate in or lead group projects on specific issues associated with SFOR/KFOR [Stabilization Force/Kosovo] and other SOSO [stability and support operations] mission training plan development, training oversight, certification, and deployments; or other taskings. Conduct an advanced distributed learning technology assessment of sites. Provide back up and support to other staff activities in support of SFOR/KFOR or other SOSO missions.

RFQ §§ 6.1.9 to 6.1.10.1. In other sections, the RFQ also referred to additional personnel (of which a few examples are quoted here):

- The contractor shall provide JMA [Joint Military Affairs] SME to accompany selected members of the MNB [multinational brigade] JMA on one or more reconnaissance trips. RFQ § 8.8.2.
- The contractor shall provide the JMA SMEs to train the MNB JMA during selected IDTs [inactive duty for training] on the functional areas listed below. RFQ § 8.8.3.3.
- Provide 24x7 on site automation help-desk support during exercises. RFQ § 8.11.5.
- Provide training support to SFOR and KFOR units in the basic operation and utilization of MS Windows and MS Office programs. RFQ § 8.11.13.

The RFQ stated that the order would be issued to the vendor whose quotation was deemed “most advantageous to the Government, price and other factors considered.” RFQ § 15.0. The RFQ stated that non-price factors--technical approach, key personnel, and past experience--were more important than price. Id. The RFQ notified vendors that prices deemed to be excessively high or low may be considered unrealistic and unreasonable, and may receive no further consideration. RFQ § 15.5. Vendors also were advised that their prices would be evaluated to determine price realism and price reasonableness, and that vendors should provide “a spreadsheet listing all labor categories, hourly rates, and extended labor costs.” Id.

Four vendors, including Alion and Anteon, submitted quotations. The Army, as the requiring activity, conducted a technical evaluation of the quotations, which was furnished to the GSA contracting officer. For the non-price factors, Alion’s quotation received the highest technical rating (with all non-price factors combined, [deleted] out of a possible 9 points). Anteon’s quotation received the second highest

combined technical rating ([deleted] out of a possible 9 points).³ AR, Tab 7, Scoring Sheet, at 1.

Each of the four vendors quoted prices for more than eight full-time equivalents (FTE). Specifically, the vendors' prices specified staffing from [deleted] FTEs⁴ for Anteon,⁵ to [deleted] FTEs for Alion.⁶ The other two vendors priced [deleted] FTEs and [deleted] FTEs. AR, Tab 8, Best Value Determination, at 4. During her review of the quotations, the contracting officer sent an e-mail to the Army, stating that “[t]he hours and costs are all over the place. There is obviously a misunderstanding of the requirements. I need to go back out to get all of the contractors on track.” AR, Tab 7, E-mail from GSA Contracting Officer to Army (May 17, 2004, 2:26 p.m.). Later in that e-mail, the contracting officer inquired whether specific positions could be listed for § 6.1.9 of the RFQ, “additional support,” along with estimated hours for evaluation purposes, and noted that “[t]here seems to be [a lot] of confusion on this section [RFQ § 6.1.9].”

At the videoconference hearing conducted by this Office, the contracting officer described her intentions in including the additional personnel provisions as follows:

Let me go back. On the additional--When we're talking additional personnel, the reason I set it up, again, because there were unknown

³ Anteon's rating for the non-price factor of key personnel was [deleted] than the ratings of the other three vendors for this factor.

⁴ Consistent with the contracting officer's "Summary Comparison of Contractor[s] Proposals," which was attached to her Best Value Determination (as well as the practice of several of the vendors), we have calculated 1 FTE as equivalent to 1,920 hours. AR, Tab 7, E-mail from Army Contact to GSA Contracting Officer (May 18, 2004, 11:11 a.m.).

⁵ Our Office totaled the hours listed in Anteon's quotation for the base year, including the "additional support option," as the contracting officer said she had done, for a total of [deleted] hours (or [deleted] FTEs). AR, Tab 4B, Anteon Quotation, at 6, 18; Tr at 55-57. The contracting officer's "Summary Comparison of Contractor[s] Proposals" specified that Anteon had proposed only [deleted] hours in the base year. That total results if [deleted] hours from Anteon's "additional support option" had been omitted. We note that Anteon [deleted], and the contracting officer's lower total could have resulted by omitting the larger portion of those hours.

⁶ Our Office totaled the hours listed in Alion's quotation for the base year, including all "additional support" hours, for a total of [deleted] hours (or [deleted] FTEs). AR, Tab 3B, Alion Quotation, at 2-9. The contracting officer's figure, which is lower than our calculation, would result if the hours for the final two labor categories ([deleted] hours and [deleted] hours) had been omitted.

requirements and they wanted the flexibility to call up a person whenever they needed it.

What was unknown, again, were the hours and the labor rate and the type of labor. I didn't--What I didn't expect--or I didn't ask for specifically was pricing. What I did expect them to do was to address it in their technical proposal, but if they did price it, I didn't expect anything significant.

Hearing Transcript (Tr.) at 10-11.⁷ She also explained that

What they [the Army] didn't want to do is have to write a new requirement every time a new position came up. So they did want some flexibility built into the solicitation to be able to call somebody up when they required it. So, yes, it had to be there, and that was the whole idea[:] you had a T&M [time and materials] contract because of that uncertainty.

Tr. at 37.

On May 19, 2004, the contracting officer proceeded to select a vendor based on the quotations. She prepared a 4-page "Best Value Award Determination" which included a 1-page price summary, listing point scores, hour totals, and prices for labor, travel, and other direct costs. The selection rationale stated that Alion's quotation had the highest technical score, but its price was "excessively high." The contracting officer explained that Alion's use of [deleted] and that "[b]ased on [its] price, [Alion] [was] no longer considered for award." AR, Tab 8, Best Value Determination, at 3. The contracting officer then selected Anteon's quotation as providing the best value because of its higher technical score and lower price (as compared to the other two remaining vendors). Id.

At the hearing conducted by our Office, the contracting officer explained her method to resolve the previously identified confusion among vendors, stating that "I deleted the additional personnel out of the proposals and then I re-looked at them and then start--I re-evaluated it basically or re-reviewed it based on those prices." Tr. at 19.⁸

⁷ Although it appeared that agency counsel sought to elicit a statement from the contracting officer during the hearing that the RFQ sought "eight types of functions" that could have been staffed with more than eight FTEs, Tr. at 62, the agency now appears to concede that "[t]he SOW [statement of work] detailed the . . . Army's present need for the eight core positions." Agency's Post-Hearing Comments at 6 (citing RFQ §§ 6.1.1 through 6.1.8).

⁸ That effort was not documented in the contemporaneous record produced in this protest.

After her review of the quotations, the contracting officer issued the task order to Anteon.

In its initial protest, Alion argued that “GSA ha[d] not properly and correctly evaluated the [vendors’] proposed prices on an ‘apples-to-apples’ basis,” or had accepted an unrealistically low price from Anteon. Initial Protest at 3. Alion also argued that Anteon’s technical proposal should have been rated marginal, at best, and therefore should not have received the order under the selection criteria, which specified that “[t]echnical approach, [k]ey personnel, and past experience are more important than price.” Id. at 7.

In response to the initial protest, the contracting officer identified three reasons why she decided to issue the order to Anteon on the basis of the quotations submitted, rather than amending the RFQ and reopening the competition. The contracting officer stated as follows:

First, Alion was the only [vendor] that proposed in a manner that was difficult to evaluate and based on support that was not required in the SOW. Second, the SOW accurately described the government’s needs. Third, there were technically acceptable and reasonably priced [quotations] on hand, which represented an excellent value to the Government. Anteon’s proposal met their [the Army’s] needs.

Initial Contracting Officer’s Statement at 3.

After receiving the agency report, Alion filed a supplemental protest arguing that “GSA should have realized that the SOW was materially flawed and misleading” because it was clear from GSA’s review of the quotations that multiple vendors “believed and understood that the [task order] would require a greater level of effort than the eight core positions indicated.” Supplemental Protest at 3. In response to the supplemental protest, the contracting officer explained that “[a]fter consulting with [the Army], I determined that no further information could be provided to [vendors] in discussions than [what was] stated in the SOW.” Supplemental Contracting Officer’s Statement at 4.⁹

⁹ The record includes an e-mail from the Army explaining that “[b]asically our justification is . . . the highest technically rank[ed] was so out of line in price that we cho[se] the second technically ranked. I’m sure this contract will be amended as time go[es] on . . . the mission is already changing.” AR, Tab 7, E-mail from Army Contact to Contracting Officer (May 18, 2004, 11:11 a.m.) (ellipses in original). Later in the same e-mail, the Army contact explained that “[i]f we knew the SME requirements we would have specified. May not need any at all depending on the expertise of the full time contractors on board and the experience of our military staff on board.”

Notwithstanding the contracting officer's reasons for not amending the RFQ, we think it is clear from the record that the RFQ did not clearly convey the Army's staffing requirements. Although the contracting officer stated, as quoted above, that she expected to receive technical and price quotations for eight positions only, with the additional personnel being addressed only in the technical portion of each quotation, we believe the RFQ did not make this distinction.¹⁰ As described above, the RFQ solicited staff over and above the "eight core positions" and, as evidenced by the quotations of all four vendors, all of them understood that the RFQ required additional support. In this regard, the vendors--albeit to varying degrees--quoted prices for these additional personnel, since there was nothing in the RFQ that even suggested that the vendors were not supposed to price the additional support. In fact, the RFQ stated that vendors should provide a spreadsheet listing all labor categories, hourly rates, and extended labor costs. RFQ § 15.5. If, as the contracting officer now argues, the RFQ was intended to seek prices for only the eight core positions, then the RFQ did not reasonably convey this intent. Where an agency invites firms to submit quotations, it has an obligation to describe its needs accurately, so that all vendors may compete on a common basis. Nautica Int'l, Inc., B-254428, Dec. 15, 1993, 93-2 CPD ¶ 321 at 5.

GSA's failure to accurately reflect in the RFQ the Army's perceived need for only eight positions, in our view, created confusion among the competitors and uncertainty about the total cost of each vendor's approach. This lack of clarity in the RFQ led to a flawed evaluation. Since each vendor addressed the additional support differently, the contracting officer had no way to meaningfully compare the total cost of each vendor's quotation to the other quotations. Thus, the contracting officer eliminated from consideration Alion's quotation based on its "excessively high" price, which included the "additional support" that was required under the terms of the RFQ. The contracting officer's decision was improper, absent a determination by the contracting officer that Alion's total price was unreasonable in light of its technical approach.

In short, here, the contracting officer never meaningfully evaluated the total prices quoted by Alion and the other vendors in the context of their proposed technical approaches to meet all of the RFQ requirements, but, rather, based the evaluation on the eight core positions only. We conclude that the contracting officer's actions were unreasonable. See Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 7 (agency must meaningfully assess total cost to government when evaluating quotations).

¹⁰ By noting this, we do not endorse the structure of the RFQ that the contracting officer evidently intended here, which would have requested quotations providing a technical approach for meeting additional personnel requirements, but failed to include a means to evaluate the associated cost of competing vendors' proposed approaches. We address this point in our recommendation below.

Moreover, the RFQ called for the selection of a vendor on a “best value” basis and provided that the non-price factors were more important than price. While Alion submitted the highest priced quotation, even for the eight core positions, the agency rated its quotation higher than Anteon’s quotation under each of the more important non-price factors. The contacting officer did not conduct any trade-off involving Alion because she, as discussed above, unreasonably found that Alion’s quotation was “excessively high” priced. AR, Tab 8, Best Value Award Determination, at 3. In our view, the record presents a reasonable possibility that Alion was prejudiced by the agency’s actions because its quotation was superior on the more important non-price factors and could have been selected in the context of a cost/technical trade-off. We, therefore, believe that Alion, which submitted the highest technically rated quotation, would have had a substantial chance of receiving the task order. McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

In fashioning the appropriate remedy in this case, we have some concern on this record whether GSA has obtained a reasonable description of what the Army’s staffing needs are for this requirement. As we understand the Army’s position, it may need additional staff, beyond the eight positions listed in RFQ §§ 6.1.1 through 6.1.8, “depending on the expertise of the full time contractors on board and the experience of our military staff on board,” in order to perform the functions described in RFQ § 8, and to the extent that “the mission is already changing.” AR, Tab 7, E-mail from Army Contact to GSA Contracting Officer (May 18, 2004, 11:11 a.m.).

Accordingly, we recommend that GSA first obtain from the Army, the requiring activity, an accurate statement of the Army’s staffing needs and that GSA amend the RFQ to reflect those staffing needs. For example, if the Army advises that it only requires eight staff, the RFQ should be amended to delete any requirement for additional support. In addition, we recommend that GSA amend the RFQ so that it receives pricing information adequate to ensure that the agency accurately understands the costs associated with each vendor’s technical approach and so that the total cost of each vendor’s approach can be meaningfully assessed and compared to the other vendors’ approaches.¹¹ We further recommend that GSA request revised

¹¹ The RFQ provided that “price proposals will be evaluated to determine price realism and reasonableness.” RFQ § 15.5. The record reflects confusion over what GSA may have intended in its reference to price reasonableness and price realism. The contracting officer explained, “It’s the same question. Same reasonable, realism.” Tr. at 47. An agency may, at its discretion, provide for the use of a price realism analysis in a solicitation for the award of a fixed-rate or fixed-price contract for various reasons, such as to assess the risk in an offeror’s approach. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD ¶ 148 at 7. The contracting officer is responsible for evaluating the reasonableness of offered prices. See, e.g., FAR

(continued...)

quotations and conduct discussions, if necessary, with vendors based on the amended requirements. In the event that its evaluation of revised quotations results in the determination that a quotation other than Anteon's represents the best value, the agency should terminate Anteon's order. We also recommend that GSA reimburse Alion for its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2004). Alion's certified claim for costs, detailing the time expended and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.¹²

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General Counsel

(...continued)

§ 15.404-1(a)(1); Symplicity Corp., supra., at 7. The agency should consider whether a price realism analysis is intended here.

¹² Although Alion's protests raise several additional grounds, we find it unnecessary to address these in light of our recommendation for corrective action.