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**Comptroller General  
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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Thomson Reuters (Healthcare), Inc.

**File:** B-402398

**Date:** March 15, 2010

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Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Smith Pachter McWhorter PLC, for the protester.

David T. Ralston, Jr., Esq., Erin L. Toomey, Esq., and Frank S. Murray, Esq., Foley & Lardner LLP, for Lexi-Comp, Inc., an intervenor.

Maj. Carla T. Peters, Department of the Army, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

There is no basis to question evaluation of protester's technical quotation as marginal overall where agency reasonably determined that quotation (1) was effectively conditioned on terms of a customer license agreement that purported to supersede terms of solicitation, and could not be reviewed because it exceeded solicitation's page limitation; (2) failed to provide sufficient information for an optional requirement; and (3) provided limited multi-lingual support for patient education material.

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### DECISION

Thomson Reuters (Healthcare), Inc. (TRH) of Carlsbad, California, protests the issuance of a task order to Lexi-Comp, Inc. (LCI) of Hudson, Ohio, under request for quotations (RFQ) No. RFQ422529, issued by the U.S. Army Medical Research Acquisition Activity for electronic clinical reference (ECR) solution, licensing, and maintenance for the Military Health System on behalf of the TRICARE Management Activity Pharmaceutical Operation Directorate. TRH challenges the evaluation of its quotation.

We deny the protest.

The RFQ, issued pursuant to Federal Acquisition Regulation (FAR) part 8.4, via the General Services Administration's (GSA) e-Buy website, was open only to GSA Federal Supply Schedule vendors. An ECR is a comprehensive, evidence-based clinical reference tool that provides clinical knowledge, including (but not limited to)

drug information, disease information, treatment guidelines, and toxicology information. The RFQ's objectives were to have a single web-based ECR solution for the military health system, including all military treatment facilities and deployed units worldwide, which would standardize functionality among the Army, Navy, and Air Force users and provide continuity and consistency for the users. Quotations were to include fixed prices for enterprise licenses, software, interfaces, functional modules, and maintenance, in accordance with the performance work statement (PWS), for an Army ECR, optional ECRs for the Navy and Air Force, and optional dental ECRs for each of the three services. The RFQ contemplated issuance--on a "best value" basis--of a fixed-price task order for a 1-year base period, with four 1-year option periods.

Quotations were limited to 25 pages (excluding resumes, past performance, and pricing) and were to be evaluated under four factors, listed in descending order of importance--technical approach, experience, past performance, and price. Vendors were warned that the evaluators would not assume that they possessed any capability or knowledge not specified in the quotation. Only quotations rated overall acceptable or higher would be in consideration for the task order. RFQ at 3-27. The non-price factors combined were more important than price.

TRH and LCI were the only vendors to submit quotations. The technical evaluation panel (TEP) rated TRH's proposal as marginal under the technical approach factor, acceptable under the experience factor, and low risk under the past performance factor, with an overall rating of marginal. The TEP evaluated LCI's proposal as acceptable under technical approach, good under experience, and low risk under past performance, with an overall rating of acceptable. Although TRH's price was lower than LCI's price of approximately \$10 million, the TEP recommended issuance of the task order to LCI based on its sound technical approach with multiple advantages, as compared to TRH's evaluated marginal technical approach, with one deficiency and multiple weaknesses and disadvantages. The contracting officer, as source selection authority, concurred in the TEP's recommendation and issued the task order to LCI. After a debriefing, TRH filed this protest.

TRH challenges the reasonableness of virtually every deficiency, weakness, and disadvantage identified in its quotation by the TEP, and concludes that it should have received the order because its quoted price was lower than LCI's. In considering a protest of an agency's evaluation, our review is confined to determining whether it was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. See United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have considered all of TRH's arguments and find that none has merit. We discuss several of its arguments below.

## Software Licenses

The PWS required vendors to provide information to demonstrate that their proposed ECR solution met or exceeded the functional/system requirements and to discuss their approach for filling in any gaps between proposed software and applicable requirements. PWS § 2.2. It also required vendors to “provide all necessary software licenses, to include maintenance and upgrades” as a contract deliverable, due 10 days after issuance of the task order. PWS § 2.2.2.9; RFQ § 4.6. In response to this requirement, TRH’s quotation included the following:

Healthcare solutions from [TRH] will be licensed pursuant to a Customer License Agreement (CLA, see attached) between [TRH] and the Military Health System Service, and the language in the [RFQ] will be superseded by the terms and conditions set forth in the CLA.

TRH Quotation at 18. Because the attached CLA exceeded the RFQ’s 25-page technical quotation limit, the TEP did not review it, and thus was unable to determine whether the CLA was consistent with the terms of the RFQ and the agency’s needs. Contracting Officer’s Statement (COS) at 2-10. The TEP assessed a deficiency on the basis that the statement essentially conditioned the quotation on the agency’s acceptance of the quoted language. TEP Consensus Report at 7-7.

TRH asserts that the TEP improperly assessed this deficiency because its quotation merely restated the operation of the order of precedence clause contained in all GSA contracts. Specifically, the clause resolves inconsistencies by giving addenda to solicitations or contracts (including license agreements for computer software) precedence over solicitation provisions. FAR § 52.212-4(s)(4), (5). TRH asserts that, since the CLA was a deliverable under the task order—with terms and conditions to be later negotiated—it was not part of the quotation, and thus did not make its quotation conditional. TRH Comments at 3-4.

The evaluation in this area was reasonable. Contrary to TRH’s assertion, the order of precedence clause could not resolve a conflict between the terms of the RFQ and the CLA because the CLA was not an addendum to the RFQ and, as TRH recognizes, would not become part of the task order (contract) until its terms and conditions were negotiated at some future date. See TRH Comments at 4; RFQ § 4.4 (agency has 10 working days to review draft deliverables). In our view, by attaching its CLA to its quotation and including the quoted language, TRH made the CLA part of its quotation, and thereby effectively qualified a material term of the RFQ (a future deliverable) by making its terms non-negotiable. In this regard, a quotation that fails to conform to material terms and conditions of a solicitation should be considered unacceptable and may not form the basis for the issuance of a task order. See Muddy Creek Oil and Gas, Inc., B-296836, Aug. 9, 2005, 2005 CPD ¶ 143 at 2. Here, TRH took the risk that any conditions and potential inconsistencies in its quotation would lead to its being negatively evaluated or rejected. To the extent TRH would

assert that its CLA terms were consistent with the RFQ, since the CLA exceeded the RFQ's page limit, the agency was precluded from reviewing it to make that determination. See Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58 at 4 (offeror risks rejection of pages and their contents by exceeding solicitation page limits). While the matter perhaps could be resolved through discussions, the agency was not required to—and in fact did not—conduct discussions. See RFQ at 4-5. We conclude that the agency reasonably evaluated TRH's quotation as deficient based on inclusion of the quoted language. Muddy Creek Oil and Gas, Inc., supra.

#### Dental Content

As an optional requirement, the RFQ required vendors to provide drug reference information to dentists, oral surgeons, and hygienists; to provide dental reference information such as illustrative diagrams and images of dental conditions; and to demonstrate the capability to create dental patient educational handouts. PWS § 2.2.3. TRH's quotation's response to these specific requirements consisted solely of the statement that it "will offer [deleted] content." TRH Quotation at 19. The TEP found this statement insufficient and assessed a significant weakness.

TRH asserts that this weakness is unreasonable because the requirement was identified as "optional" and because the government previously licensed and used its dental content—without raising quality issues—under a prior Air Force contract. TRH Comments at 6. The evaluation was unobjectionable. The designation of this requirement as "optional" meant that the government could elect to acquire it from the successful vendor; it did not excuse TRH from providing information sufficient to enable the agency to determine whether TRH could actually meet the requirement in the event the option was exercised. In this regard, the RFQ required vendors to provide information demonstrating that their proposed ECR solution met or exceeded the functional/system requirements provided in the PWS—which included the optional dental requirements—and specifically instructed vendors to address "all requirements" in the RFQ. PWS § 2.2; RFQ at 3-33. The agency determined—reasonably, we think—that TRH's mere statement that it would provide the requested content did not meet the RFQ's requirement for sufficient information demonstrating that it would meet the agency's requirements. Likewise, the fact that TRH previously provided qualified content under another contract did not meet the information requirement; as noted, the RFQ expressly warned that the agency would not assume that the vendor possessed any capability or knowledge not specified in the quotation. RFQ at 3-27. In the absence of any information demonstrating that TRH's solution met the agency's requirements, the TEP reasonably found TRH's quotation inadequate. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 6 (blanket offers of compliance with stated requirements are not an adequate substitute for detailed information necessary to establish how vendor proposes to meet agency requirements).

## Multi-Lingual Support

The RFQ required vendors' ECR service to provide reference information for drugs and related substances used inside and outside the U.S., supporting adult, geriatric, and pediatric patients; to support multiple languages; and to address the service's language support. PWS §§ 2.2.1.1, 2.2.1.10. TRH's quotation stated that [deleted]% of its patient education documents were available in [deleted]; that additional discharge documents were available in [deleted] other languages for "[deleted] of the most common conditions and procedures, and [deleted] of the most frequently prescribed medications;" and that "[TRH] is prepared to support additional languages based on further discussion." TRH Quotation at 10. The TEP assessed a weakness for this aspect of the quotation because it only covered a "very small percentage of FDA [Food and Drug Administration] approved drugs." TEP Consensus Report at 7-6.

TRH asserts that assignment of this weakness was unreasonable because the RFQ only called for support of "multiple languages" and did not call for supporting any specific number of FDA approved drugs; thus, the agency was holding it to a higher standard than disclosed in the RFQ. TRH Comments at 7.

The evaluation was unobjectionable. While the RFQ did not require any specific number of drugs to be addressed, as observed by the contracting officer, there are approximately 1,900 distinct drugs on the Department of Defense's uniform formulary for which a clinician might request patient education material. Since TRH's quotation would provide information covering only [deleted] drugs, or approximately [deleted]% of the formulary, for languages other than [deleted], the agency reasonably could question whether TRH met the intent or scope of the requirement. COS at 11. TRH asserts that its proposed coverage actually was greater than [deleted] drugs--they actually represented "[deleted]" of drug codes, Protest at 11--since the drugs covered were the most commonly prescribed, and included common non-prescription drugs as well as generic drugs and ingredients. This argument is unpersuasive. The quotation did not explain that its reference to [deleted] medications was more comprehensive than it appeared, and the evaluators were not required to speculate as to TRH's intent in this regard. See Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3 (offeror is responsible for submitting an adequately written proposal). In the final analysis, since the scope of the requirement encompasses support of healthcare for more than 9.2 million eligible beneficiaries worldwide (RFQ at 5-4), the agency reasonably evaluated the lack of multi-lingual coverage for some [deleted]% of uniform formulary drugs as a weakness in TRH's approach.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel