Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Spacesaver Systems, Inc.

File: B-284924; B-284924.2

Date: June 20, 2000

William J. Spriggs, Esq., Spriggs & Hollingsworth, for the protester.
Jeffrey C. Morhardt, Esq., Department of Education, for the agency.
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DIGEST

Protest that agency improperly performed cost/technical tradeoff under a best value acquisition approach for a Federal Supply Schedule (FSS) purchase without advising vendors of this evaluation method, is denied where record shows that, in fact, agency did not conduct a best value evaluation or perform a tradeoff; rather, agency rejected protester's lower-priced product as unacceptable for failing to meet delivery requirements, and made award to the FSS vendor offering to meet all requirements at the lowest overall cost to the government.

DECISION

Spacesaver Systems, Inc. protests the Department of Education's (DOE) award of two delivery orders to Capitol Office Systems, Inc. under that firm's Federal Supply Schedule (FSS) contract for high density filing systems. Spacesaver alleges that the agency improperly failed to make award to the low-priced, technically acceptable firm, and also failed to afford it an opportunity to respond to a revision to the agency's requirements.

We deny the protest.

The agency was interested in acquiring approximately 47,000 linear inches of high density filing systems in connection with the move of the National Center for Education Statistics (NCES) from one location in Washington, D.C. to another. The agency decided to make its purchase from the FSS and contacted five vendors, including the protester, that held current FSS contracts for the filing systems. In this connection, the record shows that on February 29, 2000 the agency provided the

vendors (by facsimile) a document entitled "Scope of Work" (SOW), which requested information from the vendors regarding the requirement.[1] Of importance for purposes of the protest, the SOW stated that the agency required the filing systems to be installed by March 30 and April 6 (the two dates relate to systems to be installed on two different floors of the NCES's new offices), and required offerors to provide information regarding their proposed configurations by March 3. SOW at 1. The SOW also specifically asked offerors to identify separate costs associated with items that were not covered under their FSS contracts. Id.

In response to the agency's request, Spacesaver submitted pricing and configuration information. In the March 3 cover letter accompanying its submission, Spacesaver advised the agency as follows:

> In order to meet your deadlines . . . we are quoting all Quickship products. These products are not available on [our FSS] contract at this time. . . . In order for us to meet [the agency's delivery requirements], we will need to have an order no later than Monday, March 6th. . . . For every day the order is delayed after March 6 delivery and installation time will increase by two days.
>
> The only product we cannot deliver in time will be the full height locking doors for the mobile systems on the 9th [floor]. These will be installed 7 weeks from the time of order.
>
> Our standard products are available on [FSS] contract and we can offer them to you on [FSS] contract, but they take 6 weeks to ship, plus installation time.

(The record also shows that Spacesaver's submission to the agency was unclear regarding whether its terms included the filing systems for one of the rooms in question. Agency Report, Apr. 14, 2000, at 3.)

On March 9, subsequent to receiving information from the vendors, the agency issued a document entitled "Modification to Scope of Work." In this document, the agency advised vendors that the anticipated award date had slipped a few days, that the agency now anticipated awarding the purchase order on March 10, and that DOE needed revised information regarding the vendors' installation schedules. This document was not provided to the protester, apparently because of the statement in Spacesaver's original submission that, even with its Quickship line of products (which were not available under Spacesaver's FSS contract, and therefore could not

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[1] On February 17, prior to giving the protester the SOW, the agency conducted a walkthrough of the new office space with representatives of the protester. Agency Report, Apr. 14, 2000, at 2 n.1.

properly have been ordered by the agency), installation would be delayed an additional 2 days for every day the order was delayed after March 6. Agency Supplemental Report, May 24, 2000, at 1-2.

In response to the agency's notice of modification, the awardee advised the agency that it could still meet the original delivery requirements of March 30 and April 6, but that it would do this by dividing the requirement among the types of filing systems to be delivered (as opposed to the location of the filing systems), installing one type of filing system by March 30 and the other type by April 6.[2] On the basis of this revised information, the agency made award to Capitol as the lowest-priced firm able to meet the agency's requirements. The protester and one other vendor had offered slightly lower prices, but DOE concluded that neither was capable of meeting the agency's needs; the lowest-priced vendor was eliminated from further consideration because its informational submission to the agency was so deficient that DOE could not determine whether the firm's products would meet its needs, and the protester was eliminated because of its inability to meet the agency's delivery requirements using products available under its FSS contract. Agency Report, Apr. 14, 2000, exh. 3, at 8.

Spacesaver argues that the award was improper because it was made on a best value basis, with a price/technical tradeoff between Spacesaver's and Capitol's systems, even though the request for information did not indicate that this would be the basis for selection. The protester asserts that it should have received the award because its acceptable system was priced lower than Capitol's.

The protester's argument is based on two incorrect premises: (1) that the agency made award on a best value basis, and (2) that its offered products met all of the agency's material requirements at a lower price. As for the first point, the record simply does not support the protester's claim. The agency did not conduct a comparative, best value, evaluation, and did not perform a price/technical tradeoff in selecting Capitol for award. Rather, the agency determined which firm's system met its requirements at the lowest price. This brings us to the second point. The record shows that Spacesaver's offered FSS product did not meet the agency's needs in terms of delivery schedule; as expressly noted in the firm's informational submission to the agency, delivery under its FSS contract would take 6 weeks, with an additional unspecified amount of time for installation. Consequently, Spacesaver's products available under the FSS were noncompliant with a material requirement, and the agency properly eliminated the firm from further consideration.

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[2] We note that, although this installation plan differs somewhat from the one the agency presented to the vendors, delivery and installation still would be completed by the required March 30 and April 6 deadlines.

Further, since DOE had determined that it would purchase from the FSS, it was not required to consider Spacesaver's alternate offer of its Quickship products, which were not available under its FSS contract.[3] See Sales Resources Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ ___ at 3-4 (agency purchasing from FSS not required to consider non-FSS alternatives); Delta Int'l, Inc., B-284364.2, May 11, 2000, 2000 CPD ¶ ___ at 3 (when placing an order under an FSS, agency is not required to seek further competition). See also Federal Acquisition Regulation (FAR) § 8.404(a). In any case, Spacesaver's March 3 cover letter made it clear that it could not meet the delivery requirements even with its Quickship products if the award date were extended past March 6. It follows that, since the awardee's filing system was the lowest overall cost product available under the FSS that satisfied all of the agency's requirements, the award to that firm was proper.

Spacesaver also alleges that the agency improperly failed to furnish it with a copy of the March 9 modification; according to the protester, it may have been able to satisfy the agency's modified delivery requirements if it had been advised of the modification. This argument also is without merit. The agency already knew from Spacesaver's initial submission that it could not meet the delivery requirements with its FSS products, and, even if the firm's non-FSS Quickship products otherwise properly could be considered, Spacesaver already had expressly advised the agency that additional delivery time would be needed if award were delayed past March 6. It follows that no purpose would have been served by providing Spacesaver with the March 9 modification.

The protest is denied.

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[3] The protester argues that this was not an FSS buy or, at least, that Spacesaver was not told it was an FSS buy. As noted above, Spacesaver's March 3 cover letter appeared to recognize the agency's interest in an FSS buy, and the protester has not explained what contractual basis it believed the agency was using in this procurement, if not the FSS.