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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Nextira Federal, LLC

File: B-290820; B-290820.2

Date: October 4, 2002

Carl L. Vacketta, Esq., Richard P. Rector, Esq., and David E. Fletcher, Esq., Piper Rudnick, for the protester.
Donald M. Sherwin, Esq., for Communications Products, Inc., an intervenor.
Phillipa L. Anderson, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a competitive acquisition under the Federal Supply Schedule (FSS), where the record provides no basis to question the reasonableness of the agency's acceptance of the low-priced FSS vendor's proposal to comply with all solicitation requirements, agency reasonably selected this vendor for the issuance of a task order.

DECISION

Nextira Federal, LLC protests the selection of Communications Products, Inc. (CPI) under "task order proposal request" (TOPR) No. VHA-040(656/568), issued by the Department of Veterans Affairs (VA) to replace/enhance telephone systems at VA medical center facilities in, as relevant here, Minnesota (in the city of St. Cloud) and South Dakota (in the cities of Fort Meade, Hot Springs, and Rapid City). Nextira challenges the evaluation of CPI's proposal.

We deny the protest.

The TOPR was issued on September 10, 2001, to all Nortel-authorized General Services Administration (GSA) Federal Supply Schedule (FSS) representatives listed on Nortel's GSA schedule contract No. GS-35F-0140L. The TOPR stated that a task order would be issued to the responsible offeror whose proposal was determined most advantageous to the government. The TOPR provided that technical proposals, which were required to meet all statement of work (SOW) requirements, would be evaluated on the basis of past performance and price, which were considered

approximately equal in importance. The TOPR advised that vendors submitting a fully compliant technical proposal would enter into discussions with the agency, to include negotiating final pricing and any additional discounts.

Four vendors, including Nextira and CPI, submitted initial technical and price proposals by the closing time on November 13. The agency's technical evaluation team (TET) evaluated each firm's technical proposal against the SOW requirements. For each of the vendors, the contracting officer, who evaluated price proposals, provided the TET with a proposed component breakdown (contract line item number (CLIN), item description, and quantities) to review in terms of whether the quantities of proposed components would satisfy the SOW requirements. The TET rated the initial technical proposals of Nextira and CPI as "acceptable as submitted," noting technical areas in each proposal that needed clarification in order to be in compliance with the SOW requirements. Agency Report (AR), Tab 15, Technical Evaluation Compliance Reports for Nextira and CPI, Dec. 2001 through Jan. 2002.[1] In her price evaluation summary, which showed that CPI's price was significantly higher than Nextira's price, the contracting officer characterized the initial technical proposals of Nextira and CPI as "conditionally acceptable." AR, Tab 16, Price Evaluation Summary Chart for Initial Proposals, Jan. 30, 2002.

By letters dated January 30, 2002, the contracting officer presented Nextira and CPI with lists of technical, component listing, and pricing items requiring "clarification." AR, Tab 17, Clarification Request Letters to Nextira and CPI. Numerous technical items for both Nextira and CPI were characterized as "non-responsive" to, or "non-compliant" with, specific SOW requirements. Id. Nextira and CPI subsequently provided responses to the contracting officer's items for clarification; these responses were evaluated by the TET and the contracting officer.

By letters dated February 20, the contracting officer requested that Nextira and CPI answer identical questions regarding their respective technical and price proposals; the contracting officer also requested the submission of "best and final offers" (BAFO). AR, Tab 26, BAFO Requests to Nextira and CPI, Feb. 20, 2002.

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[1] Although not disclosed in the TOPR, technical proposals could receive one of the following technical ratings: (1) acceptable as submitted; (2) conditionally acceptable; or (3) definitely unacceptable. A proposal evaluated as "acceptable as submitted" is defined as one that is technically sufficient and in full compliance with the SOW requirements; if clarifications of minor errors, omissions, or ambiguities are necessary, such clarifications will have minimal or no impact on pricing. A "conditionally acceptable" proposal is defined as one that can be made fully acceptable by clarification and discussion, in which correction of errors, omissions, or ambiguities will have a direct impact on pricing. AR, Tab 14, Contracting Officer's Memorandum to TET, Nov. 27, 2001, at 1.

On February 26, Nextira and CPI submitted BAFOs. On February 27, the TET chairperson sent an e-mail to the contracting officer in which he noted that Nextira's BAFO was technically acceptable; the TET chairperson was silent with respect to the acceptability of CPI's BAFO. AR, Tab 35, E-mail from TET Chairperson to Contracting Officer, Feb. 27, 2002, at 1:02 p.m. The contracting officer reviewed BAFO prices. CPI's price was now approximately 4 percent lower than Nextira's price. AR, Tab 34, Price Evaluation Summary Chart for BAFOs, Feb. 28, 2002.

During the first week in March, a number of e-mails were exchanged between members of the TET and the contracting officer. One of these e-mails, from a telecommunications analyst who served on the TET, raised questions/concerns with CPI's BAFO. AR, Tab 35, Various E-mails from TET Members and Contracting Officer, Mar. 2002.

By letter dated March 7, the contracting officer posed 13 questions/concerns to CPI in order to "fully understand the offer [it was] making for this procurement." AR, Tab 36, Contracting Officer's Letter to CPI, Mar. 7, 2002. On March 8, CPI provided a narrative response to each of the questions/concerns and it submitted another revised price proposal (reducing its already low price, for a differential of approximately 6 percent in comparison to Nextira's price). AR, Tab 37, CPI's Response to Contracting Officer's Questions/Concerns, Mar. 8, 2002. The contracting officer sent CPI's response to the TET. The TET chairperson sent an e-mail to the contracting officer in which he asked, "[w]ho has the lowest price now? I am ready for this to be awarded." AR, Tab 38, E-mail from TET Chairperson to Contracting Officer, Mar. 8, 2002, at 2:55 p.m. The TET chairperson and contracting officer were advised by the telecommunications analyst, who initially raised the questions/concerns with CPI's BAFO, to "proceed with award." AR, Tab 38, E-mail from Telecommunications Analyst to TET Chairperson and Contracting Officer, Mar. 8, 2002, at 3:21 p.m.

By letter dated March 26, the contracting officer advised CPI that the agency had received and accepted its past performance proposal dated September 14, 2001 and its technical and cost proposals dated November 13, 2001, as clarified on February 9, 2002, February 26, 2002, and March 8, 2002. The contracting officer selected CPI for performance of the SOW requirements, finding that CPI's low-priced proposal represented the best value. AR, Tab 40, Acceptance Letter to CPI, Mar. 26, 2002.

Nextira argues that in its February 26 BAFO, CPI failed to propose certain equipment necessary to meet ten requirements of the SOW. For example, Nextira states that CPI failed to propose the requisite number of elevator phones at Fort Meade and Hot Springs; that CPI did not propose the requisite number of single-line wall phones at Hot Springs; and that CPI did not propose a system at each site capable of delivering announcement messages of certain types and lengths. As a result, Nextira maintains that CPI's BAFO was technically unacceptable and, therefore, ineligible for selection.

A proposal that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. See, e.g., Techseco, Inc., B-284949, June 19, 2000, 2000 CPD ¶ 105 at 3; ASOMA Instruments, Inc., B-251674, Apr. 13, 1993, 93-1 CPD ¶ 317 at 3. Here, however, CPI's February 26 BAFO does not take exception to any of the SOW requirements; on the contrary, CPI's BAFO expressly commits the firm to satisfy these requirements.

With respect to the above-cited examples of alleged noncompliance in the area of phone quantities, the TOPR required a total of 6 elevator phones at Fort Meade and a total of 10 elevator phones at Hot Springs; the TOPR also required a total of 30 single-line wall phones at Hot Springs. TOPR Equipment Lists ¶¶ 1.4.3.2.2, 1.4.3.2.3. In its BAFO, CPI agreed to provide the requisite quantities, specifically stating that it had "included in [its] proposal the quantities indicated in the Equipment Lists in paragraphs 1.4.3.2 through 1.4.3.2.7." CPI's BAFO ¶ 1.4.3.1, at 103.

In addition, the TOPR contained a number of capability requirements for announcement messages. More specifically, the TOPR required the message processing system for each group to provide "[t]hree announcement messages of variable lengths having a minimum of 30 seconds duration each per . . . group." TOPR ¶ 1.2.16.6.1. In its BAFO, CPI stated that the system "can provide three announcement messages of variable lengths having a minimum of 30 seconds duration each per . . . group." CPI's BAFO ¶ 1.2.16.6.1, at 76. The TOPR also required "[a]n initial announcement to all incoming calls"; "[a] delay announcement to all calls waiting in queue"; and "[a]n after-hours announcement to all incoming calls, after all positions are closed, with automatic disconnect at the end of the announcement. Any call in queue when the after-hours announcement is activated will not be automatically disconnected, but will be distributed to an agent." TOPR ¶¶ 1.2.16.6.2 through 1.2.16.6.4. In its BAFO, CPI agreed to all of the announcement message requirements, specifically stating that its system provides "an initial announcement to all incoming calls," "delay announcements to all calls waiting in queue," and "an after-hours announcement to all incoming calls, after all positions are closed, with automatic disconnect at the end of the announcement. Any calls in queue when the after-hours announcement activates will not automatically disconnect, but is distributed to an available agent. Any new calls coming in will get the after-hours announcement." CPI's BAFO ¶¶ 1.2.16.6.2 through 1.2.16.6.4, at 76.

On this record, we have no basis to question the reasonableness of the agency's acceptance of CPI's proposal to meet the SOW requirements.[2]

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[2] With respect to the other six areas where Nextira argues that CPI failed to propose equipment necessary to meet the requirements of the SOW, we have reviewed the TOPR requirements and CPI's BAFO and conclude, as we did above, that CPI did not take exception to any of the SOW requirements and, in fact, expressly committed to

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Nextira also argues that CPI did not demonstrate compliance with the SOW requirements because certain equipment was not included in its price proposal. For example, Nextira states that CPI did not include in its price proposal the elevator phones at Fort Meade and Hot Springs and the single-line wall phones at Hot Springs.

However, in light of the discussion above in the context of this FSS competition, since CPI took no exception in its February 26 BAFO to any of the SOW requirements, expressly agreeing to satisfy these requirements, we do not believe that price omissions have any bearing on the technical acceptability of CPI's BAFO. In any event, we point out, and Nextira concedes, that even if certain equipment should have been priced by CPI, Nextira is not prejudiced because if CPI's price were increased to account for pricing errors, including omissions, its price would remain lower than Nextira's price. In this respect, although Nextira estimates that $108,000 must be added to CPI's price proposal, it acknowledges that "[w]hile this would not be enough to entirely eliminate CPI's price advantage in the procurement, it would significantly close the gap." Protester's Comments, Aug. 28, 2002, at 9.[3]

Finally, Nextira complains that the agency's March 7 letter to CPI constituted improper post-BAFO communications. Our review of the record shows, however, that Nextira was not prejudiced by these communications or by CPI's March 8 response.

More specifically, the challenged communications involved the agency asking CPI to clarify its engineering solution in light of technical information in its February 26 BAFO and to address pricing errors, including omissions. For example, the TOPR required, in relevant part, "[a] ful[ly] redundant system (not including batteries/inverter)." TOPR ¶ 1.1.22.4. In its BAFO, CPI stated, in relevant part, that "[a] full redundant system (not including batteries/inverter) will be provided." CPI's BAFO ¶ 1.1.22.4, at 46. While CPI already committed in its BAFO to furnish a fully redundant system, the agency nevertheless inquired whether rectifiers would be redundant. CPI responded affirmatively, confirming that it engineered redundant rectifiers for the power systems and included them in its price proposal. CPI did not change its technical approach as reflected in its BAFO. AR, Tab 37, CPI's March 8 Clarification Response (C).

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satisfying these requirements. Accordingly, we find Nextira's arguments in these other areas to be without merit.

[3] Even with the correction of pricing errors and omissions, CPI's price remains low whether looking at its February 26 BAFO or its March 8 revised price proposal.

As another example, the TOPR required that "[a]ll telephone instruments, except patient bedside telephones and wireless instruments, . . . be equipped with a laminated face plate listing the most common user features, their appropriate access codes and each VA site's emergency numbers (site specific)." TOPR ¶ 1.1.35.1.5. In its BAFO, CPI stated that "[a]ll telephone instruments, except patient bedside telephones and wireless instruments, will be equipped with a laminated face plate listing the most common features, their appropriate access codes and each VA site's emergency numbers (site specific)." CPI's BAFO ¶ 1.1.35.1.5, at 58. Again, while CPI already committed in its BAFO to provide all required overlays, the agency nevertheless inquired whether the quantities shown in CPI's price proposal for CLIN 1131, telephone set overlays, were correct. In response, CPI stated that the quantities were not correct; CPI revised its price proposal by adjusting the quantities to provide overlays for every phone (thereby conforming its price proposal to the technical approach described in its BAFO) and it raised its price for CLIN 1131 by a de minimis amount (approximately $625.00). AR, Tab 37, CPI's March 8 Clarification Response (K).

As a final example, the agency asked CPI to check the price of patient bedside phones at Fort Meade because its proposed price of $300.00 per phone seemed excessive. CPI responded that its price proposal contained an error; it reduced the price of each patient bedside phone by approximately 94 percent (to $16.80 per phone). AR, Tab 37, CPI's March 8 Clarification Response (M).

In sum, Nextira was not prejudiced by the agency's March 7 post-BAFO communications with CPI and CPI's March 8 response because CPI's February 26 BAFO, in the first instance, satisfied the SOW requirements; CPI's March 8 response confirmed technical information already in its BAFO (and no post-BAFO changes were made to its technical approach); and CPI's price was low under all circumstances.

The protest is denied.[4]

Anthony H. Gamboa
General Counsel

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[4] Nextira has raised other collateral issues, each of which we have considered and find without merit.