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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: American Recycling Systems, Inc.

File: B-292500

Date: August 18, 2003

Vincent J. Cerniglia for the protester.
Richard G. Welsh, Esq., and Arthur F. Thibodeau, Esq., Naval Facilities Engineering Command, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly found protester's quotation to be technically unacceptable is denied where the agency possessed significant countervailing evidence that created doubt whether the vendor could comply with a material requirement of the solicitation and the vendor failed to take the opportunity to provide support for its claimed ability to comply with the requirement; under such circumstances, an agency may not accept at face value a quotation's promise to meet a material requirement.

DECISION

American Recycling Systems, Inc. (ARS) protests the Department of the Navy's determination that the quotation it submitted for a trailer-mounted brass ordnance shell deformer, in response to request for quotations (RFQ) No. N6921803-RC-00264, was technically unacceptable. ARS argues that it should have received the award because it submitted the lowest-priced quotation, it had previously supplied similar units to the Navy, and its quotation stated that it would comply with all of the specifications.

We deny the protest.

On March 24, 2003, the Navy posted this combined solicitation/synopsis on the Federal Business Opportunities (FedBizOps) Internet site in accordance with subpart 12.6 of the Federal Acquisition Regulation's (FAR) streamlined procedures for evaluation and solicitation for commercial items. The procurement, set aside for small businesses, was for one trailer-mounted brass ordnance shell deformer,

maintenance manuals, a replacement parts package, and freight to the Naval Construction Battalion Center in Gulfport, Mississippi. The solicitation/synopsis set forth a number of technical specifications for the deformer. Among other things, the deformer was required to have a shell deforming capacity equal to or greater than 7,000 pounds per hour, and the ability to process up to size .50 caliber shells. The solicitation/synopsis incorporated by reference the clause at FAR § 52.212-1, "Instruction to Offerors--Commercial Items," which requires the submission of a technical description of the item offered in sufficient detail to evaluate compliance with the requirements of the solicitation. FAR § 52.212-1(b)(4). Award was to be made to the vendor offering the lowest-priced technically acceptable item.

The agency received three quotations, including one from ARS and one from Bouldin Corporation.[1] Bouldin's quotation, at a price of $94,398, was based upon its federal supply schedule (FSS) contract. The Navy found the firm's quotation to be technically acceptable but believed that there was an ambiguity regarding the firm's small business status. ARS's quotation, at a price of $92,500, was for an "OD5000 Deformer with Trailer Mount Option . . . 'The Diesel Deployer.'" ARS Quotation at 1. ARS attached its commercial specification for the offered item, stated that this was the "same specification" under which it had previously been awarded a Navy contract for two mobile units, and provided several references. Id. The attached commercial specification indicated that the unit had a capacity of "7,000 [pounds] per hour including 20mm shells." Id. at 2. ARS's quotation concluded by stating, "100% Compliance with Specification." Id. at 3.

In evaluating ARS's quotation, the Navy's technical evaluator made note of ARS's assertion that the commercial specification attached to its quotation was the "same specification" under which it had previously been awarded a Navy contract for mobile units. He determined, however, that the earlier solicitation's specification called for a capacity of 5,000 pounds per hour, not the 7,000 pounds per hour required here. In light of this discrepancy that cast doubt on ARS's ability to meet the capacity requirement, the technical evaluator looked to the information on the ARS website to ascertain whether the quoted unit could meet the solicitation's capacity requirement. The ARS website lists three configurations for the OD5000 deformer, including a deployable configuration. Each configuration relies upon the same technical specification for an "ARS OD5000 Ordnance Deformer," which is described as a fixed position ordnance deformer that can be made mobile if the optional trailer mount package is ordered. Technical Specification Sheet at 1. The first page of the technical specification states that the unit processes "over 5,000 pounds of expended shells per hour," but does not indicate how much over 5,000 pounds or under what circumstances the unit can process over 5,000 pounds of expended shells per hour. Id. The second page of the technical specification lists

[1] The third vendor withdrew its quotation.

the characteristics of the unit as capable of deforming "5,000 lbs. of expended shells per hour," and as having a capacity of "5,000 lbs. per hour." Id. at 2.

Since the information on the ARS website indicated that the unit's capacity was 5,000 pounds per hour or some unspecified amount over 5,000 pounds per hour, but was vague as to whether it could process the required 7,000 pounds per hour of shells up to .50 caliber in size, the technical evaluator turned to the website of the unit's manufacturer for more information. Since the only information available on the manufacturer's website stated that the OD5000 could deform "more than" 5,000 pounds per hour, without being more specific as to how much more over 5,000 pounds the unit could deform, the technical evaluator telephoned the manufacturer of the unit to obtain more information. His contemporaneous memorandum to the contract specialist indicates that the manufacturer's representative told him that the OD5000's processing capacity "averages" 5,000 pounds per hour. Technical Evaluator's Memorandum at 1. The technical evaluator reported that the manufacturer's representative declined to say what the unit's maximum rate might be and, instead, referred him to a current customer stationed at Camp Pendleton, one of the references listed on ARS's quotation. The individual contacted at Camp Pendleton advised the technical evaluator that he did not believe the machine would be able to process 6,000 pounds per hour, and that it would not "come close" to processing 6,000 pounds per hour of .50 caliber shells because the processing rate is shell size dependent; that is, large shell sizes such as .50 caliber typically take longer to process by weight than the smaller shell sizes. Id.

At the technical evaluator's request, the contract specialist sent an e-mail to ARS requesting an explanation for these discrepancies and asked the firm to identify the correct capacity for the OD5000 Deployer as configured in its quotation[2] and to forward "any supporting documentation (field or manufacturer testing) that verifies the stated capacity." E-mail from Contract Specialist to ARS, Apr. 10, 2003. In its e-mailed reply, ARS stated, "We can meet the requirement for 7,000 pounds per hour. The 5,000 pounds per hour is a minimum. We set the throughput for the customers' requirements at time of fabrication and test. This is not inconsistent with our performance and the referenced units previously bid." E-Mail from ARS to Contract Specialist, Apr. 10, 2003. ARS did not provide any of the supporting documentation requested by the agency.

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[2] Citing the agency's references to its quotation as offering an OD5000, ARS objects that it did not submit a quotation for an OD5000 but, rather, for an OD5000 Deployer. As the Navy points out, however, the OD5000 is the base unit that does the actual work of deforming the shells, and the use of the term "deployer" merely indicates that the unit is trailer-mounted. ARS has not persuasively rebutted the Navy's position.

Since ARS's assertion was inconsistent with the evidence in the agency's possession regarding the OD5000's capacity, and since the Navy believed the manufacturer, not ARS, was responsible for fabrication, the contract specialist and another contracting officer contacted the manufacturer regarding the capacity of the machine. The contemporaneous record of their conversation shows that a manufacturer's representative advised the agency that, "at .50 caliber [the unit] can only do at 5,000 lbs/hr," and the cost of spare parts will increase each time the machine breaks if capacity is used up to 7,000 pounds per hour. Record of Telephone Call with Manufacturer at 1.

In view of the Navy's inability to reconcile the limited and conflicting information in its possession concerning the ability of ARS's quoted unit to meet the required technical specifications, the contracting officer determined that no acceptable open market quotation had been received. The contracting officer canceled the solicitation and determined that it was appropriate to place an order for the item under Bouldin's FSS schedule. After the Navy denied its agency-level protest, ARS filed the instant protest. ARS essentially argues that the Navy should have taken its claim of "100% Compliance with Specification" at face value.

In reviewing an agency's technical evaluation of vendor submissions under an RFQ, we will not reevaluate the quotations; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and all applicable procurement statutes and regulations. Applied Mgmt. Solutions, Inc., B-291191, Nov. 15, 2002, 2002 CPD ¶ 202 at 2; Envirodyne Sys. Inc., B-279551, B-279551.2, June 29, 1998, 98-1 CPD ¶ 174 at 4. In determining the technical acceptability of a quotation, an agency may not accept at face value a quotation's promise to meet a material requirement, where there is significant countervailing evidence reasonably known to the agency evaluators that should create doubt whether the vendor will or can comply with that requirement. See Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 9; Koehring Cranes & Excavators; Komatsu Dresser Co., B-254731.2, B-245731.3, Nov. 23, 1992, 92-2 CPD ¶ 362 at 8.

As discussed above, ARS's quotation introduced countervailing evidence as to whether its unit could meet the capacity requirement by claiming that it had been awarded a prior Navy contract under the same specification when the specifications actually differed as to the capacity requirement. The Navy's technical evaluator attempted to resolve this discrepancy by reviewing the ARS website and the manufacturer's website, but the information available in both places added additional countervailing evidence to ARS's claim, and his further efforts to resolve this discrepancy by speaking with representatives of the manufacturer and a current user added still more countervailing evidence to ARS's claim. Even after being advised of these disparities, ARS did not take the opportunity to comply with the Navy's request to provide supporting documentation to verified its stated capacity. In light of the significant countervailing evidence in its possession that created doubt whether ARS could comply with the capacity requirement, and in light of ARS's

failure to provide support of its claimed ability to comply with the capacity requirement when asked to do so, we find that the Navy reasonably determined that it could not accept ARS's claim at face value and that the firm's quotation was technically unacceptable.

ARS's arguments challenging the Navy's decision are unpersuasive. Again, while the firm insists that the Navy should have accepted its assertion that it could meet all of the specifications at face value, an agency may not do so where, as here, it possesses significant countervailing evidence creating doubt as to whether ARS could comply with the capacity requirement. ARS's complaint that the agency took Bouldin's claims at face value overlooks the fact that there was no countervailing evidence casting doubt on Bouldin's claims.

ARS also objects to the fact that the Navy contacted the manufacturer to obtain information about the OD5000's capacity, arguing that the manufacturer had no part in the "bidding process." Protester's Comments at 1. Given the countervailing evidence in its possession casting doubt on ARS's ability to meet the capacity requirement, we cannot fault the Navy for its attempts to attempt to resolve these doubts by seeking information from the manufacturer. In this regard, ARS argues that it had the responsibility to comply with the specifications, not the manufacturer, and that the manufacturer merely supplies the base unit per its specifications. As the Navy explains, however, it is the base unit that performs the actual deforming operation; ARS only adds certain options external to the deformer component such as a trailer mount. While, as the Navy acknowledges, ARS asserts that it could set the throughput at 7,000 pounds per hour at the time of fabrication, ARS did not explain how this throughput could be adjusted or what the consequences with respect to durability would be if such adjustments were made; even if these adjustments could be made, they might have an adverse effect on the reliability, service life, and safety of the unit. In response to the Navy's position, ARS merely repeats that it was not the manufacturer's responsibility to meet the specifications and that it would do whatever it took to meet the capacity requirement. ARS's response does not address the Navy's concerns, which we find reasonable. Under the circumstances, we have no basis to question the Navy's finding that ARS's quotation was technically unacceptable.

The protest is denied.

Anthony H. Gamboa
General Counsel