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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CPAD Technologies, Inc.

File: B-278582.2

Date: February 19, 1998

Perer Mellon for the protester.

Capt. Joseph R. Doyle and Marian E. Sullivan, Esq., Department of the Air Force, for the agency.

Robert C. Arsenoff, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's placement of an order against a federal supply schedule contract at a price higher than that offered by protester is denied where record reflects that the agency reasonably concluded that the ordered product is the lowest price schedule item that meets agency needs.

DECISION

CPAD Technologies, Inc. protests the Department of the Air Force's issuance of a purchase order for nine narcotics and explosives detection systems to Barringer Instruments, Inc. under request for quotations (RFQ) No. F11623-97-T-3062. The protester complains that the agency should have purchased CPAD's lower-priced systems.

We deny the protest.

On July 3, 1997, the agency published a notice in the Commerce Business Daily seeking quotations for narcotics and explosives detection systems, specifically stating that it was seeking to acquire "commercial items." The systems are to be used at various Air Force bases around the world. Quotations were submitted by three companies, including CPAD's quote of \$410,000 and Barringer's quote of \$429,656. The agency conducted product demonstrations at Scott Air Force Base on September 3 and 4.

As a result of the product demonstrations, the agency determined that Barringer's systems best met the agency's needs. Among other things, the agency found that Barringer's systems were easier to set up and operate, were lighter and smaller, and had the best ability to detect explosive material.

Thereafter, the agency issued a purchase order for the detection systems from Barringer's federal supply schedule (FSS) contract. CPAD complains that: (1) it should have been notified of the agency's intent to purchase from the federal supply schedule; (2) the agency did not use formal testing procedures; and (3) the agency should have purchased CPAD's slightly lower-priced detection systems.¹ However, CPAD has not presented any information to this Office showing that the agency's actions were improper.

Regarding CPAD's complaints that it was improper for the agency to award an FSS contract, Federal Acquisition Regulation (FAR) § 8.001 (June 1997) states:

[A]gencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority—

- (vi) Mandatory Federal Supply Schedules (see Subpart 8.4);
- (vii) Optional use Federal Supply Schedules (see Subpart 8.4); and
- (viii) Commercial sources

Regarding CPAD's complaint that the agency failed to engage in formal selection procedures, FAR § 8.404(a) (June 1997) provides as follows:

When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides

Accordingly, CPAD's assertions that it was improper for the agency to satisfy its requirements by placing an order under an FSS contract, and that formal notice and selection procedures were required, are simply legally incorrect.

Regarding CPAD's assertion that the agency improperly selected Barringer's slightly higher-priced detection systems, when placing orders under FSS contracts, a

¹CPAD also complains that award of this contract will establish a "standard" for other Air Force bases. To the extent CPAD is asserting that other contracts may be awarded in the future based on issuance of this purchase order, the protest is premature since it is based on CPAD's speculation regarding future agency activities.

procuring agency need not order lower-priced items which do not meet the agency's needs. Rather, the agency must reasonably ensure that the items purchased meet the agency's needs at the lowest overall cost. Commercial Drapery Contractors, Inc., B-271222, B-271222.2, June 27, 1996, 96-1 CPD ¶ 290 at 3. The determination of the agency's needs and which product meets those needs is properly the agency's responsibility, and we will examine the agency's assessment of technical acceptability only to ensure that it has a reasonable basis. Midmark Corp., B-278298, Jan. 14, 1998, 98-1 CPD ¶ 17 at 3.

Here, the agency states, among other things, that the Barringer system's lighter weight, smaller size, and effectiveness of operation caused the agency to conclude that the Barringer system best meets its needs at the lowest overall cost. CPAD has not offered any credible evidence to demonstrate that the agency's determination in this regard was unreasonable.

The protest is denied.

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