



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: APTUS Company

File: B-281289

Date: January 20, 1999

S. Emanuel Lin for the protester.

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DIGEST

1. General Accounting Office (GAO) will not consider argument that agency has not correctly defined its own needs because GAO's role is to ensure that the statutory requirements for full and open competition are met, not to determine whether different specifications might better meet the agency's needs.
2. Under solicitation for commercial items, award to vendor whose quotation is reasonably judged to be best in terms of past performance and price is proper where solicitation provides for evaluation of past performance and price, and does not provide for comparative evaluation of vendors' technical solutions.

DECISION

APTUS Company protests the issuance of a purchase order to Troy Energy & Automation under request for quotations (RFQ) No. DAAA22-98-Q-0368, issued by the Department of the Army, Watervliet Arsenal, for upgrade of the Arsenal's automated storage and retrieval system (AS/RS). APTUS contends that Troy's technical solution does not meet the requirements of the RFQ and that its own solution was superior to Troy's.

We deny the protest.

BACKGROUND

The AS/RS is a computer-controlled warehouse storage system. Items are stored on pallets at 1,600 locations on a multi-level high-rise rack system; the pallets are moved to and from storage locations by a mechanical system that includes rollers and two cranes. A host computer, the PDP-11/44, controls the pallet movements

and stores information regarding location using a database management system (DBMS). The host computer sends commands to a stacker controller system, which consists of two PDP-11/03 microprocessors, one located on each of the cranes. The PDP-11/03s send commands to programmable logic controllers (PLC) (located on the cranes and on the warehouse wall); the PLCs in turn send commands to the cranes and rollers.

The Army explained, by way of background in the RFQ's statement of work (SOW), as follows:

Since the AS/RS holds many parts that are needed for daily mission work, it is necessary that it operate reliably and efficiently. However, in 1985, the stacker experienced a failure that shut down the system for several days. The root cause of the problem was never determined although it may have involved the DBMS regarding a pointer for a specific data address. At that time, it was discovered that the DBMS was no longer supported by [the manufacturer]. By manually updating the database to reflect that day's transactions, the system was then restarted. Multiple system failures have occurred since the summer of 1991. The number of failures peaked in 1996 incurring extensive downtime.

SOW § 1.2.3.

The agency sought to replace the DBMS software in order to avoid a recurrence of the problem; to obtain a DBMS that is vendor-supported; and to take advantage of the latest technology. SOW § 1.2.4. It also sought to replace or upgrade the existing hardware platform to accommodate the new software. Id.

The RFQ, which was issued using simplified acquisition procedures pursuant to the authority of Federal Acquisition Regulation (FAR) Subpart 13.5 (Test Program for Certain Commercial Items),¹ contemplated the award of a fixed-price purchase order with a 12-month performance period. The SOW required replacement of the host computer, replacement or upgrade of related peripheral equipment (such as printers and tape drive), and replacement of the DBMS software. SOW § 1.2.6.1.1. It did not require the replacement or upgrading of other components of the AS/RS, such as the stacker controller system. Vendors were required to provide technical

¹FAR Subpart 13.5 authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5 million, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. FAR § 13.500(a).

submissions addressing the requirements of the SOW, but the RFQ did not provide for a comparative evaluation of those technical submissions. Instead, it provided for award based on an evaluation of price and past performance.²

Four vendors submitted technical solutions by the July 28, 1998 due date. After several rounds of questions and answers, the submissions of APTUS and Troy were determined to be technically acceptable, and the submissions of the other two vendors were determined unacceptable. APTUS's submission was found acceptable despite the fact that the protester proposed to make changes to the AS/RS beyond those required by the SOW. In this regard, APTUS proposed not simply to replace the host computer, related peripherals, and the DBMS, but also to reconfigure the AS/RS by removing the PDP 11/03s and re-routing communications from the PLCs to the host computer.

After determining that the technical solutions of both Troy and APTUS were acceptable, the contracting officer invited both to submit what was referred to as best and final offers (BAFO); Troy's BAFO price was \$268,800, while APTUS's was \$272,400. The contracting officer determined that both APTUS's and Troy's past performance were satisfactory. Since Troy's technical solution was acceptable, its past performance was satisfactory, and its price was low, the contracting officer determined that award to Troy was in the best interest of the government. The agency issued a purchase order to Troy on September 9. APTUS obtained a copy of Troy's solution pursuant to a Freedom of Information Act request on October 3, and protested to our Office on October 13.

²The RFQ at page 21 incorporated by reference Watervliet Arsenal's own "Simplified Past Performance Evaluation" clause, which provides as follows:

Award will be based on an evaluation of both price and past performance. Past performance evaluation includes quality, timeliness of performance and responsiveness (general attitude toward addressing questions/problems). Award may be made to other than the low offeror when after evaluating past performance, it is determined by the contracting officer to be in the government's best interest. Price will always be an important factor and therefore offerors should make diligent efforts to control costs and submit fairly priced quotes. To be considered for award you must have a good past performance record based upon information available to the contract specialist and offer a reasonable price. . . . All offerors are reminded that to ensure they have a good past performance rating they must adhere to the following standard:

QUALITY CONFORMING PRODUCTS/SERVICES MUST BE DELIVERED IN THE TIME SPECIFIED.

ANALYSIS

APTUS argues that the purchase order should not have been issued to Troy because Troy's quotation does not provide for a reliable and efficient AS/RS, as required by section 1.2.3 of the SOW. In this regard, the protester contends that the AS/RS will function less efficiently and reliably if the PDP-11/03s are left in than if they are taken out, because the inclusion of unnecessary hardware in a system will degrade its performance.³ The PDP-11/03s are unnecessary hardware, the protester maintains, because the PDP-11/44 can run the programs they are running and communicate directly with the PLCs.

The RFQ here did not ask vendors to reconfigure the AS/RS; it asked them to replace the central computer, related peripherals, and DBMS software only. The protester's argument that replacement of the central computer and software will not be enough to guarantee a reliable and efficient system is thus, in essence, an argument that the agency has not correctly defined its own needs. This is not an argument that we will consider; our role is to ensure that the statutory requirements for full and open competition are met, not to determine whether different specifications might better meet the agency's needs. Purification Envtl., B-259280, Mar. 14, 1995, 95-1 CPD ¶ 142 at 3.

APTUS also argues that it should have received the award because its solution was technically superior to Troy's.

³According to the protester,

[t]he rule of thumb in design of a reliable system is to use as little hardware as possible, unless the hardware we bring into the system can offer us something that the software can not deliver. This is because of the fact that the hardware will fail us sooner or later. However, the software, once debugged, won't. The more hardware we use, the more troubles we'll get to keep them running and the less money we'll get to keep to ourselves.

Protester's response to agency questions, Sept. 3, 1998, at 2.

Because this RFQ was issued pursuant to the authority of FAR Subpart 13.5, the requirements of FAR Part 12 (Acquisition of Commercial Items) applied to it.⁴ FAR § 13.500(c). FAR § 12.301(c) permits the inclusion of FAR § 52.212-2 (Evaluation-Commercial Items) or a similar provision setting forth the evaluation factors when the use of evaluation factors is appropriate. The RFQ here did not incorporate FAR § 52.212-2 or otherwise provide for a comparative evaluation of technical submissions, however; it provided only for the evaluation of past performance and price. Under such circumstances, selection of the vendor judged to be best in terms of past performance and price who provided a technically acceptable submission was clearly contemplated. Vistron, Inc., B-277497, Oct. 17, 1997, 97-2 CPD ¶ 107 at 4. In other words, even assuming for the sake of argument that APTUS's submission was technically superior to Troy's, the protester was not entitled to award on this basis.⁵

Finally, APTUS argues that award to Troy was improper because, while the RFQ required that a vendor have a good past performance record to be considered for award, the contracting officer determined that Troy's record was merely satisfactory.

As APTUS points out, the RFQ required that vendors have a good past performance record to be considered for award; it also provided that to ensure a good past performance rating, vendors must have delivered quality conforming

⁴FAR Subpart 12.3 requires that solicitations for commercial items include the provisions at FAR §§ 52.212-1 (Instructions to Offerors-Commercial Items), 52.212-3 (Offeror Representations and Certifications-Commercial Items), 52.212-4 (Contract Terms and Conditions-Commercial Items), and 52.212-5 (Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items). FAR § 12.301(b). The RFQ here, at 1, block 27a, incorporated all of these clauses by reference. APTUS argues that one of these clauses, FAR § 52.212-1(g), required the agency to perform a comparative technical evaluation of the offers received because it refers to consideration of "the offeror's best terms from a price and technical standpoint." This interpretation is erroneous. FAR § 52.212-1, as its caption states, sets out a standard set of basic procedures to be followed in commercial item acquisitions. The subparagraph on which APTUS relies states that the government intends to make award without discussions, and, in that context, advises offerors to submit their best terms from a price and technical standpoint for consideration by the agency. It in no way suggests that a comparative evaluation of technical submissions was contemplated or required.

⁵To the extent that the protester is also arguing that the agency improperly failed to take technical submissions into account in selecting an awardee, it is incorrect; the Army did evaluate submissions for technical acceptability. What it did not do was perform a comparative evaluation of submissions.

products/services in the time specified. With regard to Troy's past performance, the contracting officer noted that Troy had recently completed two projects at the Arsenal and that both had been completed "in a timely and quality (technically satisfactory) manner"; he therefore concluded that Troy had a "satisfactory" past performance record. Memorandum for the Record, Sept. 9, 1998. Although the contracting officer used the adjective "satisfactory" rather than the adjective "good" to describe Troy's record, we do not think that he intended thereby to imply that Troy's record was less than good; Troy's performance in fact met the standard for a good rating, i.e., it had delivered items/services of acceptable quality on time.

The protest is denied.

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