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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Flowlogic

File: B-289173

Date: January 22, 2002

Adindu A. Uzoma for the protester.
Ken Reed, for Training Technologies, Inc., an intervenor.
Craig R. Schmauder, Esq., and Christopher J. Wood, Esq., U.S. Army Corps of Engineers, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Argument that request for quotations overstated agency's real needs, as evidenced by allegedly relaxed requirements in subsequent sole-source purchase order, is without merit, where record shows that agency's needs, although relaxed due to unforeseeable circumstances, were not overstated, and that protester's quotation would have been unacceptable even under relaxed requirements.

DECISION

Workflow Systems, Inc. d/b/a Flowlogic protests the decision by the U.S. Army Corps of Engineers to issue a sole-source purchase order to Training Technologies, Inc. (TTI) for software, technical support, training and maintenance to administer 360-degree performance review surveys and organizational surveys at the Engineering and Support Center, Huntsville, Alabama.

We deny the protest.

On August 2, 2001, the agency issued request for quotations (RFQ) No. DACW87-01-Q-0012 using simplified acquisition procedures, for a commercial software package to administer the performance review and organizational surveys for a base year, with three 1-year options. The RFQ set forth specific requirements for the software, including, for example, that the surveys be accessible through an Internet browser, that responses to the surveys be anonymous, and that the software support a minimum of 50 concurrent users. The RFQ also specified that the software had to allow users to write comments for each survey question and that each comment field allow a minimum of 2,000 characters. The RFQ specified that vendors were to deliver the software no later than September 5, 2001, and load the software and train the systems and technical administrators during the week of September 5-12. Quotations were to be evaluated based on technical capability and price, with award to be made to the responsible vendor whose quotation, conforming to the RFQ, was most advantageous to the government.

Six quotations were received by the August 13 due date. In its initial review, the technical evaluation board (TEB) determined that four of the six quotations, including Flowlogic's, were unacceptable and, after discussions with the remaining two vendors, the TEB determined that none of the quotations met the minimum requirements of the RFQ. Agency Report (AR), Tab A, Contracting Officer's Statement (COS), at 5-6. Flowlogic's quotation was determined to be unacceptable because it did not address the survey reporting requirements, and because it stated that Flowlogic could not meet the September 5-12 training delivery date. In this regard, the quotation stated that "due to the customization effort required to develop the reports needed by [the agency] training of the systems and technical administrators cannot be accomplished until on or about the first week in October." AR, Tab E, Flowlogic Quotation, at 5.

In early September, the agency determined to cancel the solicitation, since none of the quotations met its requirements.[1] The agency re-examined its needs and, because it was aware of at least two companies which could meet the RFQ requirements, determined that the requirements were not overly restrictive of competition or overstated. AR, Tab A, COS, at 6-7. Because the agency needed to have the software in place in early September, the agency determined that it did not have sufficient time to resolicit. Instead, based on prior market research and knowledge that TTI's software was used at another Corps office, the agency reviewed TTI's products on the Internet, contacted the vendor on September 6, and requested an oral quotation. After a technical and price review of TTI's Survey Tracker software and training program, the agency issued a purchase order to TTI that same day, for 1 year, with no options. TTI delivered the software to the agency on September 7. The training for agency personnel was scheduled for September 13 and 14, but, because of the terrorist attacks of September 11, it was delayed until September 17-20. AR, Tab A, COS, at 8. The agency provided Flowlogic an informal debriefing by telephone on October 3, informing the protester why its quotation was unacceptable. Flowlogic filed this protest with our Office on October 15.

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[1] A written amendment, dated September 6, canceling the amendment was drafted but never issued. AR, Tab A, COS, at 7. Flowlogic was notified of the cancellation by telephone on or about September 11. Id.

Flowlogic maintains that the requirements under the RFQ were overly restrictive, as evidenced by the agency's alleged waiver of certain requirements for TTI. In particular, the protester cites the RFQ's September 5 installation date as a requirement that TTI was not required to meet. Flowlogic concludes that, had the relaxed requirements been set forth in the RFQ, its quotation would not have been unacceptable and it would have been able to meet the requirements at the lowest price.

We find nothing improper in the agency's actions. First, there is no basis for finding that the RFQ's delivery schedule overstated the agency's needs. In this regard, the Corps explains that the September timeframe was critical because, under applicable guidelines, personnel of a certain rank have an annual rating period of October 1 through September 30. AR, Tab A, COS, at 1. The protester does not challenge this explanation. While the agency did extend the delivery dates for TTI, it did so, not because its needs had changed or because TTI could not meet them, but solely due to the time taken for the unsuccessful competition, and the delay caused by the events of September 11. Most importantly, even as extended, delivery still was required in September. This being the case, there is no basis for Flowlogic's claim that it could have met the agency's relaxed delivery requirements had they been included in the RFQ, since the September timeframe remained critical, and Flowlogic's quotation specifically stated that it could not provide the training until October. In light of this fact, and since the other quotations received were unacceptable, the Corps reasonably determined that TTI was the only source available that could meet its needs within the September timeframe, and therefore properly proceeded on a sole-source basis. See Federal Acquisition Regulation (FAR) §§ 13.104, 13.106-1(b); Aleman & Assocs., Inc., B-287275, May 17, 2001, 2001 CPD ¶ 93 at 3.[2]

The protest is denied.

Anthony H. Gamboa
General Counsel

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[2] In its November 26 comments, the protester for the first time argues that TTI's software did not provide the required comment field for each question or provide the minimum 2,000-character length for the comment field. Under our Bid Protest Regulations, protests based on other than apparent solicitation improprieties must be filed within 10 days of when the protester knew or should have known the basis for protest. 4 C.F.R. § 21.2(a)(2) (2001). Flowlogic knew of the award to TTI on October 3, and on that date "determined that the Survey Tracker software could not meet the [a]gency's stated solicitation requirements." Protester's Comments at 2. Thus, Flowlogic was required to protest on this basis within 10 days after October 3. Because it did not do so, this ground of protest is untimely and will not be considered.