



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Chemical Services, Inc.

File: B-246158

Date: February 6, 1992

Anthony C. Schamel, General Chemical Services, Inc., for the protester.

Robert E. Beeton, Department of Veterans Affairs, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Rejection of protester's quotation was proper where protester, in telephone conversation with contracting officer after submission of quotations, reasonably led contracting officer to question protester's commitment to specified delivery schedule; although protester disputes agency's conclusion that it qualified its quotation, record shows that agency interpretation of telephone conversation was reasonable.

DECISION

General Chemical Services, Inc. (GCS) protests the rejection of its quotation under request for quotations (RFQ) No. 589-92-1-082-004, issued by the Department of Veterans Affairs (VA) for hazardous waste removal services at the VA Medical Center in Kansas City, Missouri. GCS argues that the agency improperly interpreted statements made during a telephone conversation after the submission of quotations as indicating that it was not agreeing unequivocally to meet the RFQ's delivery requirements.

We deny the protest.

The RFQ was issued using the small purchase procedures outlined in the Federal Acquisition Regulation, part 13, and called for the submission of lump-sum quotations to remove various hazardous waste products. Quotations were to be submitted no later than October 1, 1991, and waste removal was to be accomplished no later than October 22. The October 22 deadline had to be complied with in order for the VA to avoid a violation of Environmental Protection Agency

(EPA) regulations relating to the amount of time the Medical Center could properly store the waste.

By the October 1 deadline, the VA received two quotations. GCS submitted the low quote of \$11,879 and the awardee, Heritage Remediation/Engineering Services (HRE), submitted a quote of \$12,270.

On October 3, the contracting officer telephoned the protester to obtain information relating to GCS' ability to perform the contract, such as license numbers and evidence of insurance. The specifics of that conversation are in dispute, but both parties agree that the question of what incinerator GCS intended to use was discussed. According to the protester, it specified a particular incinerator and stated that it "should be able to get the administrative approvals from [the incinerator operator] soon enough to accomplish the removal . . ." by the October 22 deadline. The protester also maintains that later during the same conversation, it stated that although it had "many administrative activities to accomplish" prior to the actual removal, it would nonetheless meet the solicitation's October 22 deadline.

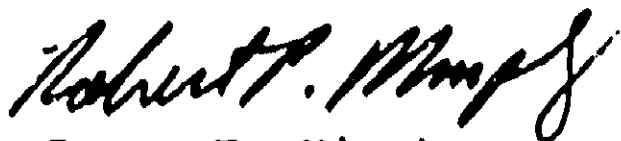
The contracting officer states that she emphasized to the protester's representative the importance of meeting the October 22 deadline and asked whether GCS could "definitely" meet the delivery schedule. According to her account, GCS' representative stated that the firm could meet the preparatory work requirements associated with removal of the waste (i.e., packaging and organizing) and also stated that he "thought" he could arrange a date with the incinerator which would allow removal in a timely manner. Subsequent to this conversation, the contracting officer decided to make award to HRE because of her concern that GCS would be unable to meet the RFQ's delivery requirements. On October 7, she notified the protester of her intent to make the award and on October 8, she awarded a delivery order to HRE. Later that same day, she received a letter from GCS in which it affirmed its commitment to meet the October 22 deadline. This protest followed.

GCS argues that the agency improperly rejected its otherwise conforming quotation based on the October 3 telephone conversation. According to GCS, its remarks during that conversation were merely an expression of its understanding of the "appreciable administrative work" that had to be accomplished prior to the actual removal. The protester maintains that it did not intend by those remarks to indicate other than a firm commitment to meet all of the RFQ's requirements. GCS also maintains that the nature of its remarks was understood by the contracting officer.

We find the VA's actions unobjectionable. Whether or not GCS intended its remarks as a qualification of its agreement to meet the performance schedule, we find that those remarks cast some doubt upon the firm's commitment to meet the October 22 deadline. In this regard, both parties have submitted affidavits describing the October 3 conversation and both accounts of that conversation confirm that GCS stated that it had not, as of October 3, arranged a specific date with its incinerator. Both accounts also confirm that GCS' representative stated that the firm "should" be able to meet the October 22 deadline, the implicit uncertainty apparently relating to the "appreciable amount of administrative work" to be accomplished prior to actual removal of the waste.

Although GCS attaches no significance to its choice of words, we think the word "should" clearly indicated that GCS was unwilling (or unable) to make an unequivocal commitment to meeting the performance deadline. Given the importance of the deadline for purposes of satisfying EPA regulations, the contracting officer reasonably concluded, we find, that this uncertainty rendered GCS' quote unacceptable. See generally Southeastern Chiller Serv., Inc., B-243158, June 24, 1991, 91-1 CPD ¶ 598.

The protest is denied.


for James F. Hinchman
General Counsel