



Decision

Matter of: Digital Systems Group, Inc.
File: B-261070
Date: June 9, 1995

DECISION

Digital Systems Group, Inc. (DSG) protests the issuance by the Department of Agriculture of a delivery order to KPMG Peat Marwick under schedule contract No. GS00K92AFS2503, which covers financial management systems software and support services. We dismiss the protest.

The Department of Agriculture's Natural Resources Conservation Service issued a letter of interest (LOI) on March 7, 1995, in which it announced the agency's requirement for technical support and enhancements to an existing financial management system. The agency sent the LOI to the four firms holding schedule contracts for the relevant software and services.¹ The LOI included a statement of the required work and the following language:

"Please identify the level of support by the appropriate labor rates required to provide the technical support. This acquisition is subject to the terms and conditions of the scheduled contract."

Only DSG and KPMG Peat Marwick responded to the LOI. DSG's response contained labor rates, without specifying the number of hours that would be required to perform the work or otherwise indicating total price. Peat Marwick's response included both labor rates and the number of hours required. Because DSG's response failed to set forth a price for the work, the agency treated it as nonresponsive. A delivery order was issued to Peat Marwick, whose response was found to satisfy the government's requirements at a reasonable price, on April 7.

¹This acquisition was conducted under the provisions of the Federal Information Resources Management Regulation (FIRMR) governing procurement of financial management systems software under multiple award schedule contracts. FIRMR § 201-39.804.

DSG contends that it should have been selected for award because its proposed labor rates were lower than Peat Marwick's.² DSG takes the position that the only evaluation criterion set forth in the LOI was offerors' labor rates and, since its rates were lower than Peat Marwick's, the agency was required to make award on that basis. DSG argues that, if the agency "wanted offerors to provide more than the labor rates as identified in the LOI, it should have so stated."

The agency points out that the terms of the schedule contract are that "contractors are to respond to the LOI by indicating the category of personnel needed to perform the requirement (if not specified in the LOI) along with the number of hours required to perform the requirement." Because nothing in the LOI superseded that provision, the agency believed that the LOI mandates the submission of the number of hours required to perform the work. Since DSG failed to satisfy that requirement, its response was, in the agency's view, properly rejected. In its comments on the agency report, DSG does not deny that the terms of the schedule contract required the submission of labor hours in response to letters of interest, nor does it explain why the language in the LOI at issue here somehow modifies the schedule contract terms in this regard.

Instead, DSG repeats what we view as a facially unreasonable reading of the LOI, namely, that the agency was required to make award on the basis of labor rates alone, treating these rates as the only measure of cost. It is solely on this basis that DSG can argue that its response represented the low cost to the government. In fact, since DSG did not disclose the number of hours that it would require to perform the work, its response could have represented a much higher number of labor hours and therefore a higher cost than Peat Marwick's, notwithstanding any difference in labor rates. Contrary to the protester's assertion, the agency could not determine whether DSG's response represented a lower (or higher) cost than Peat Marwick's, because DSG's response to the LOI, by failing to identify the number of labor hours needed, did not include a proposed price. The agency reasonably rejected the response for that reason, and DSG's submissions to our Office do not set forth a valid basis of protest.

²Based on the same argument, DSG further contends that, in the circumstances of this procurement, the agency improperly selected other than the low priced initial proposal without discussions.

We note that, after filing its protest with our Office, DSG sent the agency a letter arguing that its assumption about the role of labor rates as the sole selection criterion was justified, because the LOI was defective in failing to include evaluation criteria and award factors.³ In that letter, DSG also contended that it was arbitrary for the agency to reject the protester's response, since the LOI was defective in this regard. Regardless of the LOI's failure to identify evaluation or award criteria, we view as unreasonable DSG's assumption that award was to be made on the basis of labor rates alone, without regard to total cost. To the extent that DSG is basing its protest on an alleged defect in the LOI, the protest is untimely, since it was filed after the closing time. 4 C.F.R. § 21.2(a)(1) (1995).

The protest is dismissed.



Paul Lieberman
Assistant General Counsel

³The protester cites a provision in the schedule contract essentially identical to the provision of FIRMR § 201-39.804-4(c)(3), which requires that letters of interest identify evaluation and award factors.