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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Standard Communications, Inc.

File: B-406021

Date: January 24, 2012

Pamela J. Mazza, Esq., Steven J. Koprince, Esq., and Megan C. Connor, Esq., Piliro Mazza PLLC, for the protester.

Theodore P. Watson, Esq., and Idris S. Keith, Esq., Watson & Associates, LLC, for Advanced Systems, Inc., an intervenor.

Jaron E. Chriss, Esq., General Services Administration, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency engaged in discussions with the awardee, but not the protester, is sustained where record shows that awardee was permitted to make material changes to its quote that had the effect of rendering its original, technically unacceptable quote acceptable, but the agency did not afford protester an opportunity to revise its quote.

DECISION

Standard Communications, Inc. (SCI), of Hume, Virginia, protests the issuance of a task order to Advanced Systems, Inc. (ASI), of Fairfax, Virginia, under request for quotations (RFQ) No. 4QTG3610TR10, issued by the General Services Administration (GSA) to acquire, on behalf of the Veterans Administration (VA), a complete digital/analog voice telephone system and related services for the VA Medical Center in Fayetteville, North Carolina. SCI contends that the agency engaged in discussions with ASI but not with it, and also that the agency misevaluated the ASI quotation.

We sustain the protest.

BACKGROUND

The RFQ contemplated issuance of a task order to the firm submitting the lowest-priced, technically acceptable quotation.¹ RFQ at 68. Firms were advised that quotations would be evaluated for technical acceptability considering technical approach and past performance. RFQ at 71-73. The RFQ also advised firms that the agency intended to make award on the basis of initial quotes. RFQ at 68.

In response to the solicitation, the agency received three timely quotes. After evaluating the quotes, the agency determined that the quote submitted by the protester was technically acceptable, while the quotes submitted by ASI and the third concern were not technically acceptable. Agency Report (AR), exh. 19, Memorandum from Agency's Program Manager, Nov. 2, 2011, at 1-2.² The agency then engaged in written exchanges with the three firms that were characterized at the time of the exchanges as clarifications. In response to the clarification requests sent to ASI and the third vendor, the agency received materials that previously had not been included in the original quotations. AR, exhs. 16, 18. In response to the clarification requests that had been sent to the protester, the agency received representations that, in fact, its original quote had addressed the agency's concerns, along with reproduced portions of SCI's original quote that the protester submitted to substantiate its representation. AR, exh. 17.

Based on the answers provided during the agency's exchange with the vendors, the agency changed its view regarding the quotes of ASI and the third vendor; the agency found the two quotes technically acceptable after the exchange. Id. ASI's price was the lowest (\$1,694,644.25) while the protester's quotation was [deleted]. Because the agency determined that the quotation from ASI was the lowest-priced, technically acceptable quote, the agency issued a task order to ASI. After learning of the agency's source selection decision, SCI protested to our Office.

PROTEST

SCI asserts that the agency's actions amounted to engaging in discussions with ASI and the third vendor, but not with it. The protester argues that, once the agency

¹ The competition was limited to firms holding contracts under GSA's Veterans Technology Services government-wide acquisition contract program, under which qualifying firms previously had been awarded multiple award, indefinite-delivery, indefinite-quantity contracts.

² The record does not contain a contemporaneous finding regarding the technical acceptability of the three firms; after SCI filed its protest, and in connection with its agency report, the agency's program manager prepared a memorandum describing the agency's findings regarding the initial quotations.

opened discussions with the other two firms, it was required to afford the protester an opportunity to make revisions to its quote. SCI maintains that it was prejudiced by the agency's failure to engage in discussions with it because it was not issued a task order based on initial quotes and it was not afforded an opportunity to revise its quote.

The agency responds that its exchanges with all three firms were clarifications, and maintains that none of the firms was permitted to materially modify its quotation. Consequently, the agency maintains that it did not engage in discussions with any of the competitors, and that, correspondingly, it was under no obligation to afford the protester an opportunity to revise its quote.

ANALYSIS

As a threshold matter, we note that we have taken jurisdiction over this task order acquisition, notwithstanding that it is valued at less than \$10 million. We do so because the protest was filed after May 27, 2011, the date upon which task order jurisdiction conferred on our Office relating to civilian agency acquisitions under the terms of the National Defense Authorization Act (NDAA), Pub. L. No. 110-181, 122 Stat. 3 (2008) expired, but before December 31, 2011, the date on which our jurisdiction was effectively revived. National Defense Authorization Act for Fiscal Year 2012, § 813, Pub. L. No. 112-81, 125 Stat. 1298, 1490 (2011). As explained more fully in our decision in Technatomy Corp., B-405130, June 14, 2011, 2011 CPD ¶ 107, once our task order jurisdiction under the NDAA expired, our jurisdiction to consider task order protests reverted back to the jurisdiction we exercised prior to the passage of the Federal Acquisition Streamlining Act, Pub. L. No. 103-355, 108 Stat. 3242 (1994). We therefore concluded that we had jurisdiction to consider all protests relating to the issuance of a task order, and not merely those confined to protests against task orders valued at \$10 million or more. Technatomy Corp., supra at 5.

Turning to the merits of the case, discussions occur where a firm is afforded an opportunity to make material revisions to its quote or proposal. The Analysis Group, LLC, B-401726, B-401726.2, Nov. 13, 2009, 2009 CPD ¶ 237 at 2. It is axiomatic that, if a concern makes a revision to its quote or proposal that has the effect of converting it from one that is unacceptable to one that is acceptable and eligible for award, the revision is material and discussions have occurred. Id.

Here, as noted, the record shows that the agency found ASI's quote and the third vendor's quote technically unacceptable as submitted. AR, exh. 19, Memorandum from Agency's Program Manager, Nov. 2, 2011, at 1-2. With respect to ASI's quote, the agency explains that there were six major questions that, without a revision from ASI, rendered its quotation technically unacceptable. Id.; AR, exh. 16. Similarly, with respect to the third vendor, the record shows that there were seven questions relating to the acceptability of its quote that, without a revision, rendered it

technically unacceptable. AR, exh. 19, Memorandum from Agency's Program Manager, Nov. 2, 2011, at 2; AR, exh. 18.

In response to the agency's questions, the record shows that both vendors submitted material revisions to their quotations that had the effect of rendering their quotations technically acceptable. AR, exhs. 16, 18. For example, in the case of ASI, the record shows that, among other things, it submitted a number of detailed drawings, a resume for its program manager and details about its proposed training that were absent from its original quote. AR, exh. 16. Since the information submitted was necessary for the agency to find ASI's (and the third vendor's) quote technically acceptable, it follows that, in providing the two firms an opportunity to submit these quotation revisions, the agency engaged in discussions. The Analysis Group, LLC, supra at 3.

In contrast, SCI's responses to the agency's clarification questions did not revise its quotation. Instead, the responses stated that the initial quote was complete, and included a narrative explanation regarding why its initial quote was complete, along with verbatim quotes from the original submission. For example, the agency sent SCI a clarification request stating that, as understood by the agency, SCI was offering [deleted]. In response to the agency's request, SCI explained that its original quote was complete, and that [deleted]. SCI then included a verbatim quotation from its original submission relating to [deleted] to demonstrate that, in fact, the agency's understanding was incorrect. AR, exh. 17, at unnumbered pages 10-11.

The record thus shows that, in the case of ASI and the third vendor, the agency solicited and obtained material proposal revisions that ultimately led the agency to find that these two quotes were technically acceptable; in so doing, the agency engaged in discussions with these two firms. In contrast, the agency solicited and obtained only clarifications from SCI, and SCI, in responding to the agency's requests, did not make any revisions to its quotation. In other words, the record shows that the agency afforded only two of the three competitors an opportunity to revise their quotes. Under such circumstances, in order to treat all of the competitors equally, the agency was obligated to afford the protester an opportunity to revise its quote as well.³ The Analysis Group, LLC, supra at 3-4. We therefore sustain SCI's protest.

³ For the record, we disagree with the protester's assertion that the requirements of Federal Acquisition Regulation (FAR) part 15 relating to discussions in negotiated acquisitions necessarily apply in their entirety in the context of a task order acquisition. Supplemental Protest, Nov. 28, 2011, at 5 n. 1. Nonetheless, whether or not all of the FAR part 15 discussions requirements apply here, the underlying fundamental principle of equal treatment for all competitors in an acquisition does

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RECOMMENDATION

In light of the foregoing, we recommend that the agency reopen the procurement and afford all of the competitors an opportunity to revise their quotations. The agency should evaluate the revised quotations and make award based on that reevaluation, consistent with the terms of the solicitation. Should a firm other than ASI be found in line for award, the agency should terminate the task order issued to ASI and issue a task order to the firm found in line for award, if otherwise proper.⁴ Finally, we recommend that the agency reimburse the protester the costs of filing and pursuing the protest, including reasonable attorneys fees, to the extent that those costs were incurred in connection with the issue upon which we sustain this protest. 4 C.F.R. § 21.8(d)(1) (2011). SCI's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel

(...continued)

apply, and forms the underlying basis for sustaining SCI's protest. The Analysis Group, LLC, supra at 3-4.

⁴ SCI raises several additional arguments relating to the agency's evaluation of ASI's quote. We need not consider these allegations since the agency will be obtaining and evaluating revised quotations from the vendors, and that action renders these protest allegations academic.