Decision

Matter of: Hanel Storage Systems, L.P.

File: B-409030.2

Date: September 15, 2014

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Lisa C. House, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Agency’s acceptance of a quotation that failed to conform to a material solicitation requirement is unreasonable; a technically unacceptable quotation may not form the basis for award.

DECISION

Hanel Storage Systems, L.P., of Pittsburgh, Pennsylvania, protests the issuance of a purchase order to Kardex Remstar, LLC, of Westbrook, Maine, under request for quotations (RFQ) No. VA256-13-Q-1665, issued by the Department of Veterans Affairs (VA) for vertical storage units. Hanel contends that Kardex’s quotation failed to satisfy a material solicitation requirement.

We sustain the protest.

BACKGROUND

This procurement is for various types of vertical storage units for the Jack C. Montgomery VA Medical Center (VAMC) in Muskogee, Oklahoma, and was the subject of a prior decision by our Office. See Kardex Remstar, LLC, B-409030, Jan. 17, 2014, 2014 CPD ¶ 1. In that decision, we sustained a protest filed by Kardex challenging the VA’s original decision to issue the purchase order to Hanel, because the VA conducted discussions with Kardex that were unfair and not meaningful. Id. at 4-5.
The RFQ, which is described in more detail in our prior decision, provided for the issuance of an order for 14 vertical storage units after a reverse auction among Federal Supply Schedule vendors. See id. at 1-2; RFQ, Schedule, at 4-8. Although the RFQ did not state how vendor quotations would be evaluated, the record shows that the VA evaluated them and made its selection decision on a lowest-priced, technically-acceptable basis. See Agency Report (AR), Tab 5, Technical Meeting Minutes, at 1; AR (B-409030), Tab 12, Technical Meeting Minutes, at 1.¹

The solicitation included a number of specifications that the various storage units were required to satisfy, including, as relevant here, that the warehouse area units have an “[e]xtractor system” that “[m]ust be suspended on four corners to allow for uneven loading of pans and access from end of units for service.”² RFQ amend. 2, Statement of Work (SOW), at 4.

Reevaluation

In response to our earlier protest recommendation, the VA conducted further discussions and obtained revised quotations from Kardex and Hanel, which were evaluated by the contracting officer (CO) and VAMC technical personnel. CO’s Statement at 1; AR, Tabs 3-4, Requests for Revised Quotations; Tab 6, Kardex Revised Quotation; Tab 7, Hanel Revised Quotation. As relevant here, Kardex described its extractor system for the warehouse storage units as follows:

We offer a state of the art central extractor guidance system. This central system allows for uneven loading of pans and does not inhibit access from the end of the units for service. The extractor is driven by a steel belted tooth drive system (for durability and proper alignment/guidance of the extractor). The extractor’s design eliminates tilting/skewing of shelves/containers during movement. The drive belt is superior for cleanliness, noise reduction and multiple points of fully engaged contact with the drive sprockets.

AR, Tab 6, Kardex Revised Quotation, at 10 (emphasis added).³ The quotation provided a number of photographs, diagrams, descriptions, and specifications for Kardex's proposed storage units. Id. at 32, 37-41, 60.

¹ Our citations are to the agency report submitted in response to the instant protest, except as indicated.

² The earlier protest involved an RFQ requirement for self-contained, climate-controlled storage units that is not at issue in this protest. Kardex Remstar, LLC, supra, at 2-5.

³ Although the specification for the extractor system was not at issue in the prior protest, we note that Kardex, in its discussions with the VA that were the subject (continued...)
The VA conducted further discussions with the vendors (regarding other specifications not relevant here), and requested and received final revised quotations from them. CO’s Statement at 1-2; AR, Tab 8, Kardex Discussions, at 2; Tab 9, Hanel Discussions, at 1; Tab 10, Kardex Final Quotation; Tab 11, Hanel Final Quotation. The evaluators found that both quotations were technically acceptable, and selected Kardex’s lower-priced quotation ($724,780 compared to Hanel’s quotation of $872,932) for award. AR, Tab 5, Technical Meeting Minutes, at 1.

The VA issued the purchase order to Kardex, and this protest followed.

DISCUSSION

Hanel protests that Kardex’s warehouse units do not satisfy a material solicitation requirement. Protest at 6-7. Specifically, citing various depictions and passages from Kardex’s quotation, the protester argues that Kardex’s extractor system is suspended centrally on the sides of its proposed warehouse units, and not suspended on four corners, contrary to the RFQ’s explicit requirement.4 See Protester’s Comments at 4-5.

The VA concedes that the RFQ “specified precise technical requirements” for the solicited storage units, and does not dispute the protester’s argument that Kardex’s extractor system is not suspended on four corners as required by the RFQ.5 See AR at 2-3. The agency instead argues (citing, inter alia, Zarc Int’l, Inc., B-292708, Oct. 3, 2003, 2003 CPD ¶ 172 and Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ 219, aff’d Spacesaver--Recon., B-224339.2, Sept. 19, 1986, 86-2 CPD ¶ 328, Spacesaver--2nd Recon., B-224339.3, Oct. 16, 1986, 86-2 CPD ¶ 435) that because quotations are not offers that the agency can accept, the agency may select a quotation that does not comply with the RFQ’s identified requirements, where the agency finds that the quotation will otherwise satisfy the agency’s needs. AR at 2-3. We disagree.

(...continued)

of our earlier decision, had provided an identical description of its extractor system after the agency’s evaluators found that Kardex’s initial quotation had not provided information on the system. See AR (B-409030), Tab 10, Kardex Discussions, at 8.

4 Hanel raised a number of other protest grounds, but withdrew them after reviewing the agency report. See Protester’s Comments at 2.

5 Although Kardex argues that its system’s “vertical” suspension satisfies the RFQ’s requirement that the extractor be suspended in four corners, see Intervenor’s Supp. Comments at 1-2, there is no documentation in the contemporaneous evaluation record, nor does the VA now argue, that Kardex’s vertical suspension system satisfied the RFQ’s requirement for a four-corner suspension.
The legal nature of a quotation vis-à-vis “offer” and “acceptance” in the context of a RFQ issued to FSS vendors does not alter the fundamental requirement that the FSS competition be conducted fairly and in a manner that affords vendors an opportunity to compete on an equal basis. In Zarc Int’l, cited by the agency, we specifically explained that where an agency determines that a nonconforming quotation will satisfy its needs, the agency generally should amend the RFQ and reopen the competition to allow all vendors to compete for its actual requirements on an equal basis. See Zarc Int’l, Inc., supra, at 2.

Further, in Spacesaver, also cited by the agency, we explained that agencies must treat all vendors equally and afford them an opportunity to compete on an equal basis. See Spacesaver, supra, at 2. Normally, an agency does not assure equal competition where it identifies a particular model or requirement in a solicitation but does not impose that requirement on an offeror who deviates from the terms of the solicitation. This is so even when only quotations are requested, since it can lead vendors to quote on different bases. Id. In this regard, we have held that clearly stated technical requirements are considered material to the needs of the government, and a quotation that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 5.

Although we ultimately denied the protests in Zarc Int’l and Spacesaver, the outcome in these cases turned on the question of competitive prejudice, not the fact that the vendors submitted quotations instead of offers. In Zarc Int’l, the procuring agency issued a purchase order to a FSS vendor that did not quote the particular product number identified in the RFQ after determining, like here, that the vendor’s product met the agency’s needs. Zarc Int’l, supra, at 1-2. We nevertheless denied the protest because the protester failed to establish a reasonable possibility that it was prejudiced by the agency’s actions. Id. at 2. Similarly, in Spacesaver, we denied the protest of an agency’s issuance of purchase order to a FSS vendor that did not quote the product model specified in the RFQ because the protester had not alleged that it would have offered a product other than the specified model had it been on notice that the agency would consider equivalent items. Spacesaver, supra, at 2.

Here, however, Hanel represents that it would have proposed a different, lower-priced system had it known that the VA would accept a 2-point center suspension extraction system, instead of the specified 4-corner suspension system. Protester’s Comments at 1. We have recognized the possibility of prejudice where a

protester that was the only vendor offering the product specified in an RFQ alleges that it would have lowered its price had it been aware of the potential for competition, and where the vendor offering the specified product alleges that it could have offered a different, lower-priced, acceptable product had it been on notice that the agency would consider equivalent items. Zarc Int'l, supra, at 2. Accordingly, we find a reasonable possibility that Hanel was prejudiced by the agency's failure to evaluate quotations based on the requirements set forth in the solicitation.

RECOMMENDATION

We recommend that the VA either terminate the order issued to Kardex and issue an order to Hanel, or reopen the competition to clarify its actual requirements and obtain revised quotations. We also recommend that Hanel be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2014). Hanel should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. Id., § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel