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Decision

Matter of: RELX Inc.

File: B-421597.2; B-421597.3

Date: November 17, 2023

Scott F. Lane, Esq., Jayna Marie Rust, Esq., and Katherine S. Nucci, Esq., Thompson Coburn LLP, for the protester.

Colonial Frank Yoon, and Major Asilla J. Schrider, Department of the Air Force, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the issuance of a task order under a brand-name-or-equal procurement is sustained where record shows that agency improperly issued the task order based on a non-conforming quotation.

DECISION

RELX, Inc., d/b/a LexisNexis, of Washington, D.C., protests the issuance of a task order to West Publishing Company, of St. Paul, Minnesota, under request for quotations (RFQ) No. 1609916, issued by the Department of the Air Force for an electronic search and data tool license. RELX argues that the quotation submitted by West does not meet the requirements of the RFQ and should have been rejected.

We sustain the protest.

BACKGROUND

The RFQ contemplates the issuance, on a lowest-price, technically acceptable (LPTA) basis, of a fixed-price task order under the successful vendor's Federal Supply Schedule (FSS) contract, for a software license for a base year and four 1-year options, to be used by the agency to enable its employees to perform access and search capabilities relating to law enforcement, and legal and legislative content. RFQ at 1.¹ Firms were advised that quotations would be listed from lowest to highest price, and that the agency would "serially" evaluate them for technical acceptability, starting with the lowest-priced quotation. RFQ at 3. Once the LPTA quotation was identified, the agency would conclude its evaluation and issue the task order to the firm submitting that quotation. *Id*

The solicitation was issued on a "brand-name-or-equal" basis, and advised firms that they were required to provide either a brand-name LexisNexis software license, or equivalent. The RFQ included a list of salient characteristics that firms were required to meet. AR, Exh. 4, RFQ attach. 1, Salient Characteristics.

The agency received two quotations, one from the protester and one from West, with West submitting the lowest price. The agency evaluated the West quotation; found it technically acceptable; initially issued the task order to West on March 28, 2023; and advised RELX of its selection decision. AR, Exh. 17, Unsuccessful Vendor Notice to RELX. RELX filed a protest with our Office, maintaining that the West quotation was technically unacceptable. In response to that protest, the agency elected to take corrective action. Based on that proposed corrective action, we dismissed RELX's original protest. *RELX, Inc.*, B-421597, May 1, 2023 (unpublished decision).

The agency reevaluated the West quotation and again concluded that it was technically acceptable; again selected West for issuance of the task order on August 10; and advised RELX of its new selection decision. AR, Exh. 24, Second Unsuccessful Vendor Notice to RELX. After being advised of the agency's selection decision, RELX filed the instant protest.

DISCUSSION

RELX argues that the West quotation is technically unacceptable because it does not meet several of the salient characteristics listed in the RFQ. RELX also argues that issuing the task order to West was legally impermissible because not all the required components of its proposed solution are included on its FSS contract, and the firm included "open market" elements in its response to the RFQ.

We have considered all of RELX's allegations. We conclude that the agency's actions were improper because, in fact, there are elements of the West product that do not

¹ All references to the RFQ are to the version provided by the agency in its report, Agency Report (AR), Exh. 3, unless otherwise noted.

meet the salient characteristics of the solicitation, and also that West's quotation included "open market" items not available under the firm's FSS contract. We discuss our conclusions in detail below.

Failure to Meet the Salient Characteristics

RELX argues that the West quotation failed to meet several of the RFQ's salient characteristics. We agree with RELX. We discuss RELX's principal assertion relating to West's failure to meet the RFQ's salient characteristics for illustrative purposes. We need not discuss the merits of RELX's remaining assertions in any detail because we conclude that it was improper for the agency to have made award to West based on its quotation.

Under a brand name or equal solicitation, a firm offering an equal product must demonstrate that the product conforms to the salient characteristics of the brand name product listed in the solicitation. *OnSite Sterilization, LLC*, B-405395, Oct. 25, 2011, 2011 CPD ¶ 228 at 3. In general, the particular features of the brand name item identified in the solicitation as salient characteristics are presumed to be material and essential to the government's needs, and quotations offering other than the brand name product that fail to demonstrate compliance with the stated salient characteristics should properly be rejected as unacceptable. *Sourcelinq, LLC--Protest & Costs*, B-405907.2 *et al.*, Jan. 27, 2012, 2012 CPD ¶ 58 at 4. In reviewing protests of agency evaluations, we review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. *Ricoh America's Corp.*, B-402239, Feb. 22, 2010, 2010 CPD ¶ 55 at 3.

Among other requirements, RELX directs our attention to salient characteristic 1001, which states as follows: "Provide a single platform with a singular login to provide maximum workflow efficiency of public records, and records management law enforcement data. *Multiple platforms, applications, or systems are not acceptable.*" RFQ, attach. 1, Salient Characteristics, at 1 (italics supplied). RELX argues that the West quotation fails to meet this requirement because it includes multiple "platforms" and "applications." We agree.

A review of the West quotation shows that, although it includes a "singular login," it utilizes more than one platform and application, and thus fails to meet this requirement. First, in describing its "singular login" the West quotation states: "Thomson Reuters OnePass [a proprietary product of West] provides a single, secure, user-created login to manage access to *multiple Thomson Reuters applications.*" AR, Exh. 9, West Quotation, at 5 (italics supplied). Thus, in describing its "singular login" product, West's quotation expressly provides that it will be used to access multiple Thompson Reuters applications, which is inconsistent with the prohibition included in salient characteristic 1001 against multiple applications.

Those multiple Thompson Reuters products are described in further detail in West's quotation, and it is evident that more than one Thompson Reuters or West product will be necessary to meet the agency's requirements.

Elsewhere in its quotation, West describes what amounts to two separate "platforms," one that provides law-enforcement-specific records searches, and a second used to conduct traditional legal and legislative searches. The law-enforcement-specific platform is described in the quotation as follows:

Thomson Reuters CLEAR [another proprietary West product] is a *powerful investigative platform* that delivers a vast collection of public and proprietary records and brings all key content together into a single working environment to give you a more streamlined, efficient search.

AR, Exh. 9, West Quotation, at 3 (italics supplied). The quotation goes on in some detail to describe the capabilities of the CLEAR platform. *Id.* at 3-20.

Separately in its quotation, West describes its response to the RFQ's requirement for access to legal and legislative sources; the legal and legislative functionality is provided by a separate West product known as Westlaw. West's quotation provides:

This information [legal and legislative sources] is available in Westlaw. Our offer to AFOSI [the agency] includes access to *the following Westlaw platform and content collections*:

- Westlaw Edge with Litigation Analytics
- Westlaw Precision
- National Primary
- Litigation
- Analytical Plus

AR, Exh. 9 at 22 (italics supplied).

It is therefore evident from an examination of the West quotation that there are two separate "platforms" being offered: CLEAR for performing law-enforcement-specific research; and a second, separate platform, Westlaw, for performing traditional legal and legislative research. This is inconsistent with the RFQ's statement that "multiple platforms, applications or systems are not acceptable. RFQ, attach. 1, Salient Characteristic 1001. We therefore sustain RELX's protest on this basis.²

² The agency suggests that RELX was not prejudiced by its acceptance of West's non-conforming quotation because it has not represented that it would have changed its

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Inclusion of “Open Market” Items

RELX also argues that the agency improperly accepted the West quotation because, although this acquisition was conducted using the FSS, the West quotation improperly included “open market” items that were not included on its FSS contract. RELX argues that it was improper for the agency to have accepted the West quotation under the circumstances.

As a general rule, when agencies obtain their requirements using the FSS, they are confined to ordering products and services that are available from the contractors’ respective FSS contracts; agencies may not properly order FSS and non-FSS items (*i.e.*, open market items) when using the FSS. See *Scope Infotech, Inc.*, B-414782.4, B-414782.5, Mar. 22, 2018, 2018 CPD ¶ 116 at 6.

Here, the agency concedes that, at the time it issued the task order to West, certain items were not available on its FSS contract.³ Nonetheless, the agency points out that RELX also included both FSS items and open market items in its quotation. The agency therefore argues that its issuance of the task order to West was unobjectionable because issuing the task order to RELX would similarly involve issuing a task order to a firm that included open market items with its quotation.

The record bears out the agency’s position that the RELX quotation also included items that were open market items. The RELX quotation specifically provides as follows:

Our MAS [FSS multiple award schedule] contract only includes solutions that align with CLINs [contract line item numbers] [deleted]. LexisNexis does provide solutions that align with all CLINs under our FEDLINK [Federal Library and Information Network] schedule (contract No. LCFDL19D0028). Procuring under FEDLINK provides the Government similar benefits to procuring under GSA [General Services Administration] and will allow us to submit a single bid for all required CLINs. Please note

quotation had it known that the agency would accept a non-conforming product. However, the agency’s position ignores the fact that RELX submitted a technically conforming, brand-name product, and was therefore eligible for issuance of the task order. Had the agency not improperly made award to West, RELX would have been the lowest priced, technically acceptable vendor.

³ The agency advises that, although the items at issue were not on the West FSS contract on the date the task order was issued (August 10, 2023) all of the items in question are essentially the latest enhancements to existing West products that were available under its FSS contract on the date the task order was issued. The agency further advises that the enhancements have been incorporated into the West FSS for fiscal year 2024 and became available effective September 18, 2023. See AR, Exh. 35, Modification to the West FSS Contract, September 18, 2023.

that this quote will provide a continuation of current services and meet all CLINs.

AR, Exh. 12, RELX quotation, at 2, 26.

The record therefore establishes that both West's and RELX's quotations included open market items, and therefore both were ineligible for the issuance of an FSS task order based on the RFQ as currently issued.⁴

RECOMMENDATION

Ordinarily under the circumstances, we would simply recommend that the agency terminate the task order issued to West and issue the task order to RELX, if otherwise proper. However, as noted, neither firm submitted a quotation that properly could form the basis for issuance of the task order. In addition, the agency's acceptance of the West quotation suggests that the solicitation as currently written may not reflect the agency's actual requirements.

Under these circumstances, we recommend that the agency terminate the task order issued to West; amend the underlying solicitation as appropriate; obtain and evaluate revised quotations; and issue the task order to the firm identified as the successful contractor under the revised solicitation. We also recommend that RELX be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

⁴ RELX suggests that it could have confined its quotation to only items available under the FSS if it had [deleted]. However, the RELX quotation was [deleted] by LexisNexis, and did not include [deleted]. It necessarily follows that its quotation as submitted failed to include only FSS items, just like West's quotation.