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Decision

Matter of: Hi-Tech Bed Systems Corporation

File: B-405683

Date: December 7, 2011

Philip A. Nicholas, Esq., Nicholas & Tangeman, LLC, for the protester.
Kristi L. Morgan, Esq., Weitz Morgan PLLC, for AVTEQ, Inc., the intervenor.
Roger Christopher Paden, Esq., Department of the Army, for the agency.
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly determined protester's quote to be technically unacceptable is denied where the quote failed to comply with the solicitation's requirements.

DECISION

Hi-Tech Bed Systems Corporation, of Wheatland, Wyoming, protests the award of a contract to AVTEQ, Inc., of Dallas, Texas, by the Department of the Army, U.S. Army Corps of Engineers, under request for quotation (RFQ) No. W912DY-11-T-0377 for various furnishings at Fort Leonard Wood in Missouri. Hi-Tech contends the agency improperly determined that its quote was technically unacceptable.

We deny the protest.

BACKGROUND

The RFQ, issued on July 12, 2011, contemplated the award of a fixed-price delivery order for a variety of furniture for a building at Fort Leonard Wood. RFQ at 1; RFQ, attach. 1, Contract Line Items, at 1-5; Contracting Officer's Statement at 1. The Army solicited quotes pursuant to Federal Acquisition Regulation (FAR) Subpart 8.4 from furniture manufacturers who hold General Service Administration (GSA) Federal Supply Schedules. Contracting Officer's Statement at 1.

Included with the RFQ was a "Furniture Item Descriptions" attachment, which provided detailed instructions for vendors and descriptions of the items identified in

the RFQ's schedule. RFQ, attach. 2, Furniture Item Descriptions, at 1-9. As is relevant here, the Furniture Item Descriptions required that proffered living unit tables be made of solid wood oak or maple and have simple lines and durable detailing. Id. at 6. The size of the rectangular tables had to be 30-inches wide, 36-inches long, and 30-inches high, and the table top had to be a minimum of 1 and 1/4 inches thick and be plastic laminate. Id. Additionally, the RFQ required that the tables comply with certain Americans with Disabilities Act requirements, among other specifications. Finally, the Furniture Item Descriptions stated:

Cut sheets are required for this item [living unit table] which shows (1) the dimensions to include clearance height under the table, (2) the appearance and style, (3) the edge detail, (4) THE THICKNESS AND MATERIAL USED FOR THE TABLE TOP, and (5) the overall construction material and methods.

Id. (emphasis in original); see also id. at 1 (“[c]ut sheets are required in accordance with these . . . [Furniture] Item Descriptions”); RFQ at 6 (“Cut Sheets Required”).

The RFQ provided that quotes would receive a technical rating of either acceptable or unacceptable, and technically unacceptable quotes would not be considered for award. RFQ at 7. To be considered technically acceptable, the RFQ instructed vendors that all quoted items had to be in accordance with the Furniture Item Descriptions of the RFQ. Id. Additionally, the RFQ provided that the award would be made to the vendor that provided the best overall value to the agency based on the evaluation of the following factors, listed in descending order of importance: furniture install completion, price, and past performance. Id. at 7-8.

Hi-Tech and AVTEQ submitted quotes to the Army before the RFQ's July 20, 2011, deadline. See AR, Tab 4, AVTEQ's Initial Quote; AR, Tab 7, Hi-Tech's Initial Quote. The agency reviewed the quotes and determined that both quotes were technically unacceptable. AR, Tab 10, Technical Review/Best Value Analysis, at 2. On August 20, the agency emailed the two vendors and identified for each the deficiencies and weaknesses in their initial quotes. AR, Tab 5, AVTEQ's Discussion Email, at 1; AR, Tab 8, Hi-Tech's Discussion Email, at 1. In its email to Hi-Tech, the agency informed the firm that the omitted cut sheet for the living unit tables constituted a deficiency, and the agency requested that Hi-Tech “[p]lease provide [the] cut sheet.” AR, Tab 8, Hi-Tech's Discussion Email, at 1. Both vendors were given until August 24 to submit their “best and final quote.” Id.; AR, Tab 5, AVTEQ's Discussion Email, at 1.

Hi-Tech submitted a revised quote, but the firm did not include the requested cut sheet for the living unit tables. AR, Tab 9, Hi-Tech's Revised Quote, at 1-5. The firm explained in an email to the agency that it did not have a cut sheet because the tables were “custom.” AR, Tab 12, Email from Hi-Tech to Navy, Aug. 24, 2011, at 2; Comments at 2. The Army concluded that Hi-Tech's quote remained technically

unacceptable because the company failed to correct the deficiency by providing a cut sheet for the living unit tables, as required by the RFQ. AR, Tab 10, Technical Review/Best Value Analysis, at 1. In contrast, the agency determined that AVTEQ's revised quote was now technically acceptable, and the Army awarded the firm the contract. Id. Hi-Tech subsequently filed a protest with our Office, arguing that the Army improperly determined that the firm's quote was deficient and that the Army should have provided Hi-Tech an opportunity to cure any deficiency in its quote.

DISCUSSION

Hi-Tech objects to the agency's determination that its quote was technically unacceptable. Hi-Tech does not dispute that the RFQ required quotes to include a cut sheet for the living unit tables, but the firm contends that it provided sufficient information demonstrating compliance with the specifications. Protest at 2. In this regard, Hi-Tech argues that the missing cut sheet was "not necessary for the bid evaluation" and was "a matter of form, not substance." Id. Hi-Tech also maintains that the Army should have provided Hi-Tech an opportunity to cure the deficiency in its quote, among other assertions.¹ Id. at 3.

Where a protester challenges an agency's evaluation resulting in the rejection of its quote as technically unacceptable, our review is limited to considering whether the evaluation and determination were reasonable and in accordance with the terms of the RFQ and applicable regulations and statutes. See Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 3. A protester's mere disagreement with the evaluation does not show that it lacked a reasonable basis. 1-A Constr. & Fire, LLP, B-404128, Jan. 7, 2011, 2011 CPD ¶ 15 at 3. Moreover, it is the vendor's responsibility to submit the information requested by the agency for evaluation purposes, and a vendor that does not do so runs the risk that its quote will be rejected as unacceptable. eTouch Fed. Sys., LLC, B-404894.3, Aug. 15, 2011, 2011 CPD ¶ 160 at 4; 3K Office Furniture Distribution GmbH, B-292911, Dec. 18, 2003, 2003 CPD ¶ 231 at 4. In this regard, clearly stated technical requirements are considered material to the needs of the government, and a quote 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.

Here, the Army's evaluation was reasonable and consistent with the express terms of the RFQ. The RFQ required cut sheets for certain items, including the living unit

¹ In its protest, Hi-Tech also requested that our Office determine whether AVTEQ's quote met a certain GSA standard and whether there was evidence of retaliation by the agency against Hi-Tech. Protest at 3. Our Office dismissed these protest grounds because Hi-Tech failed to state a detailed legal and factual basis for protest. See 4 C.F.R. §§ 21.1(c)(4), 21.5(f) (2011).

tables. RFQ at 6; RFQ, attach. 2, Furniture Item Descriptions, at 6. According to the Army, cut sheets were required to allow the agency to determine whether the proffered products comply with the RFQ's requirements. AR at 3-4. The RFQ highlighted the importance of the cut sheets by identifying the cut sheets as a quote requirement in no less than four places and in bold print. See, e.g., RFQ at 6; RFQ, attach. 1, Contract Line Items, at 1; RFQ, attach. 2, Furniture Item Descriptions, at 1, 6. Moreover, after receiving Hi-Tech's initial quote, the Army requested that Hi-Tech provide a cut sheet for the living unit tables in its revised quote. AR, Tab 8, Hi-Tech's Discussion Email, at 1. By not submitting the cut sheet, Hi-Tech did not comply with the express terms of the RFQ or the Army's instruction in its discussion email. Accordingly, we find nothing objectionable about the Army's determination that Hi-Tech's quote was technically unacceptable because it failed to include the cut sheet.

Hi-Tech makes a number of arguments as to why the failure to include the cut sheet in its quote should not have resulted in the agency finding the quote technically unacceptable. For example, Hi-Tech contends that its quote contained "sufficient information" to demonstrate that its quoted products complied with the RFQ's specifications. Protest at 2; Comments at 3. However, Hi-Tech has not identified what specific information shows compliance with the RFQ's detailed requirements for the living unit tables.

Similarly, Hi-Tech argues that at 2 percent of the total quoted amount, the tables were a "de minimis" part of the quote and not including the cut sheet was a "matter of form, not substance, which is immaterial." Protest at 2. However, regardless of the tables' price compared to the rest of the items quoted, the RFQ emphasized in multiple places the cut sheet requirement, and the agency reminded the protester during discussions that a cut sheet for the living unit table was required. Under these circumstances, we cannot find that the cut sheet was immaterial.

Finally, Hi-Tech argues that the Army was required to provide the firm an opportunity to cure any deficiency in its quote, in accordance with FAR § 14.405. Protest at 2; Comments at 4; see FAR § 14.405. However, this procurement was conducted under FAR Part 8, and FAR Part 14 expressly does not apply to GSA schedule procurements like the one here. See FAR § 8.404(a). In any event, although the Army was not required to provide Hi-Tech an opportunity to cure deficiencies (such as the omission of a cut sheet), the Army nonetheless provided the firm such opportunity here. However, in response to the agency's clear request to provide the cut sheet in a revised quote, the protester failed to do so. See AR, Tab 8, Hi-Tech's Discussion Email, at 1. Accordingly, we find no basis to sustain the protest on this ground.

In sum, we find reasonable the agency's determination that Hi-Tech's quote was technically unacceptable.²

The protest is denied.

Lynn H. Gibson
General Counsel

² For the first time in its comments on the agency's report, which Hi-Tech filed on October 13, Hi-Tech alleges that the living unit tables proffered by AVTEQ were not responsive to the RFQ. Comments at 2. This supplemental protest ground is dismissed as untimely. The allegation is based on information provided to Hi-Tech on September 29. See Agency Motion for Summary Relief, Sept. 27, 2011, at 1. Because Hi-Tech made the allegation for the first time in its October 13 filing--after the 10-day period permitted by our Bid Protest Regulations--the supplemental protest ground is untimely. See 4 C.F.R. § 21.2(a)(2) (protests based on other than solicitation improprieties shall be filed not later than 10 days after the basis of protest is known or should have been known).