



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Argus & Black, Inc.

File: B-405813

Date: January 3, 2012

A. Jeff Ifrah, Esq., for the protester.

J. Dale Gipson, Esq., and Michael P. Johnson, Esq., Lanier Ford Shaver & Payne P.C., for Yorktown Systems Group, Inc., the intervenor.

Robert B. Neill, Esq., Department of the Army, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's quotation failed to provide a fixed price for a particular contract line item (CLIN) is denied where the CLIN provided for the reimbursement of a vendor's travel costs up to a not-to-exceed amount, to which the awardee did not take exception.

2. Protest that an awardee's quotation was technically unacceptable is denied where the agency reasonably found the awardee's quotation to be acceptable, consistent with the solicitation's stated evaluation criteria.

DECISION

Argus & Black, Inc., of Cary, North Carolina, protests the award of a contract to Yorktown Systems Group, Inc., of Huntsville, Alabama, under request for quotations (RFQ) No. W9124E-11-T-0061, issued by the Department of the Army for instructor support services.¹

We deny the protest.

¹ Although the protest here concerns the placement of an order under an RFQ, the RFQ and the parties refer to the award of a contract as does this decision for the sake of consistency.

BACKGROUND

The RFQ, issued under the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) Parts 12 and 13, provided for the award of a fixed-price contract to train personnel in security force assistance, Iraqi and Afghan cultural awareness, and personnel recovery. RFQ at 27; RFQ amend. 1, at 3; Performance Work Statement (PWS) at 2. The PWS requires the vendor to provide qualified instructors, including a mobile training team, in several subject areas. See PWS at 2-18. Training was to be provided in accordance with relevant field manuals, guidance documents, and other requirements specified in the PWS. See id. For example, personnel recovery training was required to be based on the Army's Field Manual No. 3-50.1, "Army Personnel Recovery," and taught in accordance with the U.S. Armed Forces Command's (FORSCOM) pre-deployment training guidance, as well as additional program instructions to be provided by the agency. See id. at 18.

Offerors were informed that award would be made on a lowest-priced, technically acceptable basis considering the following evaluation factors: price, technical, and past performance. RFQ at 9. With regard to the technical factor, the RFQ required vendors to provide a detailed training methodology and document their ability to train students in accordance with the PWS and military policies and procedures. See id. With regard to price, vendors were instructed to quote fixed prices for four contract line items (CLINS 0001, 0002, 0004, and 0005). CLIN 0003 provided for the reimbursement of a vendor's actual costs for travel up to a not-to-exceed amount of \$200,000 in accordance with Joint Travel Regulations and the PWS. Id. at 3-5; PWS at 20. In response to questions from vendors, the agency advised them to use \$200,000 as a "plug number" for the CLIN 0003 travel costs. RFQ amend. 1, Questions/Answers, at 2.

The agency received five quotations, including those of Yorktown and Argus. Yorktown's and Argus's quotations were both found to be technically acceptable, and their price quotations were evaluated by the CO and the contract specialist. See Contracting Officer's (CO) Statement at 2-3; Agency Report (AR), Tab 8, Evaluation Memorandum, at 1-3. Yorktown's quotation was evaluated as the lowest priced at \$1,754,980, and Argus's quotation was evaluated as the second lowest at \$1,760,075. Id. With respect to the price evaluation, the Army used the \$200,000 plug number in evaluating vendors' travel costs under CLIN 0003. CO's Supp. Statement at 1; Supp. AR at 5. As pertinent here, Yorktown stated in its price quotation that "[i]n performance of the contract, travel will be invoiced on a cost reimbursable basis; [in accordance with] the [Joint Travel Regulations], [DELETED] by Yorktown Systems Group." See Yorktown's Quotation at 16.

Award was made to Yorktown as the vendor with the lowest-priced, technically acceptable quotation, and this protest followed.

DISCUSSION

Argus complains that Yorktown's quotation should have been rejected because the awardee did not offer a fixed price for CLIN 0003. Specifically, the protester argues that Yorktown's quotation, which stated that the vendor's travel costs would have a [DELETED], was contrary to the RFQ's requirement for fixed prices. See Protester's Comments and Supp. Protest at 3-4. The protester also contends that in evaluating Yorktown's price quotation the Army should have added [DELETED] to the \$200,000 plug number for travel costs under CLIN 0003 to reflect Yorktown's [DELETED]. Id. Argus states that adding [DELETED] to Yorktown's evaluated price would result in the protester's evaluated price being lower than Yorktown's. See id. at 3; Protester's Supp. Comments at 3.

A quotation that fails to conform to material terms and conditions of a solicitation should be considered unacceptable and may not form the basis for the issuance of a task order. Muddy Creek Oil and Gas, Inc., B-296836, Aug. 9, 2005, 2005 CPD ¶ 143 at 2. The requirement to propose fixed prices is a material term or condition of a solicitation requiring such pricing. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶83 at 4; Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73 at 2-3. Where a solicitation requests proposals on a fixed-price basis, a price offer that is conditional and not firm cannot be considered for award. Id.; SunEdison, LLC, B-298583, B-298583.2, Oct. 30, 2006, 2006 CPD ¶ 168 at 5.

Here, contrary to the protester's premise, the RFQ did not request the quotation of a fixed price for CLIN 0003. Rather, as noted above, the RFQ provided that vendors would be reimbursed their costs up to a not-to-exceed amount of \$200,000 under this CLIN 0003 in accordance with the Joint Travel Regulations and the PWS.² See RFQ at 4; PWS at 20. Nothing in Yorktown's quotation indicates that the awardee took exception to solicitation provision that the firm would be reimbursed its travel costs up the not-to-exceed amount. We find that the Army reasonably evaluated all vendors' quotations using the \$200,000 plug number that was provided for CLIN 0003. See AR, Tab 11, Quotation Abstract.

Argus also complains that Yorktown's quotation did not satisfy certain PWS requirements.³ See Protester's Comments and Supp. Protest at 4-5; Protester's

² Argus does not contend that Yorktown's quotation would violate either the Joint Travel Regulations or the specific provision of the PWS providing for the reimbursement of travel costs.

³ Argus initially protested that Yorktown did not have relevant past performance, that the agency failed to consider risks associated with Yorktown's compensation for course instructions and with Yorktown's proposed hours of instruction, and that Yorktown's price was not reasonable. Protest at 1-2. The Army responded to these

(continued...)

Supp. Comments at 3-4. In this respect, the protester states that the evaluators expressed concern over Yorktown's personnel recovery training and failure to mention the relevant guidance, whereas the evaluators noted Argus's proposed FORSCOM personnel recovery training. See Protester's Comments and Supp. Protest at 5.

Simplified acquisition procedures are designed to, among other things, reduce administrative costs, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002; Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3. When using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation, we examine the record to determine whether the agency met this standard and executed its discretion reasonably. Computers Universal, Inc., B-297552, Feb. 14, 2006, 2006 CPD ¶ 42 at 4-5; DOER Marine, B-295087, Dec. 21, 2004, 2004 CPD ¶ 252 at 3.

Here, we find that the agency reasonably found that Yorktown's quotation was technically acceptable. Although the agency's evaluators noted qualitative differences between the vendors' technical quotations, both firms' quotations were found to satisfy the RFQ requirements and to be technically acceptable. With respect to the protester's contention that Yorktown would not satisfy the requirement to provide training in accordance with FORSCOM guidance, the Army states that, although Yorktown did not specifically refer to the FORSCOM guidance in its quotation, the awardee fully explained its instruction methodology and how it would ensure that its training would be consistent with all applicable policy guidance.⁴ Supp. AR at 9. Based upon this, the Army found Yorktown's quotation to be acceptable.⁵ Although Argus disagrees with the agency's judgment in this regard,

(...continued)

arguments in its report. Because the protester did not in its comments address the agency's responses, we consider these issues to be abandoned. Washington-Harris Group, B-401794, B-401794.2, Nov. 16, 2009, 2009 CPD ¶ 230 at 5 n.3.

⁴ Yorktown's technical quotation stated that its instructors would provide instruction in personnel recovery operations as required, and listed five policies and procedures that Yorktown would use in refining or developing training materials in that regard. Yorktown's Quotation at 14.

⁵ The Army notes that there was no requirement in the RFQ that vendors repeat the title of specific training policies. Supp. AR at 8.

the protester's disagreement does not establish that the agency acted unreasonably. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Lynn H. Gibson
General Counsel