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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: The Modal Shop, Inc.

File: B-410173

Date: November 7, 2014

Joseph J. Petrillo, Esq., Petrillo & Powell, PLLC, for the protester.
Jonathan S. Baker, Esq., Department of Commerce, for the agency.
Kathleen A. Gilhooly, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated and rejected the protester's quotation as technically unacceptable where the protester's quotation failed to comply with a material requirement specified in the solicitation.

DECISION

The Modal Shop, Inc., of Cincinnati, Ohio, protests the award of a contract to APS Dynamics, Inc., of San Juan Capistrano, California, under request for quotations (RFQ) No. SB1341-14-RQ-1075, issued by the Department of Commerce, National Institute of Standards and Technology (NIST), for a primary vibration calibration system. Modal challenges the agency's evaluation and rejection of its quotation as technically unacceptable.

We deny the protest.

BACKGROUND

NIST issued the RFQ on April 10, 2014, using commercial item and simplified acquisition procedures contained in Federal Acquisition Regulation (FAR) Parts 12 (commercial items) and 13 (simplified acquisition procedures). The RFQ required vendors to provide a quotation for four contract line item numbers (CLIN). CLIN 001 called for one primary vibration calibration system which met or exceeded 14 listed elements, "or demonstrated equivalent," and met or exceeded eight listed

minimum performance requirements. RFQ at 2. Section A of CLIN 001 further stated that:

This system shall contain the following elements, or demonstrated equivalent. The performance of each of these elements must comply with all parameter precision, tolerance, and/or uncertainty requirements specified in the ISO standards cited above...

Id. The first listed element was a “High Frequency Vibration exciter, also known as a shaker.”¹ Agency Report, Memorandum of Law, at 2. Among the specifications the shaker was required to meet was, as relevant here, the following: “Minimum axial resonance frequency of the moving element assembly: 52 kHz.” RFQ at 2.

The RFQ provided for award on a best-value basis, considering the following evaluation criteria: technical capability, past performance, and price. RFQ at 11. Technical capability was more important than price, and past performance and price were of equal importance. With respect to technical capability, the RFQ cautioned that:

Evaluation of technical capability shall be based on the information provided in the quotation. NIST will evaluate whether the offeror has demonstrated that its proposed equipment meets or exceeds all minimum requirements. Quotations that do not demonstrate the proposed equipment meets all requirements will not be considered further for award.

RFQ at 11. The RFQ further provided that past performance and price would not be evaluated for quotations that were determined technically unacceptable. RFQ at 12.

The agency received quotations from Modal and APS. With respect to the required shaker element, Modal’s quotation indicated that its proposed product was “partially compliant” with the 52 kHz minimum axial resonance frequency specification, and included the following note:

The closed loop nature of the system design makes axial resonance irrelevant in terms of system performance and uncertainty. The resonance of the armature is not 52 kHz, but the closed loop nature

¹ The protester explains that the purpose of a vibration calibrator is to calibrate vibration sensors; this is achieved by subjecting the sensor to a known vibration and then measuring the result as reported by the sensor. Protester’s Comments at 3. The shaker at issue here is the part of the calibration equipment that vibrates the sensor being tested.

and the dynamic range of the hardware prevents this from adversely affecting the performance.

Agency Report (AR), Tab 3, Protester's Quotation, Vol. 3 at 37.

NIST evaluated Modal's quotation as technically unacceptable for failure to comply with the axial resonance frequency requirement, and did not consider the quotation further for award. AR at 3. This protest followed.

DISCUSSION

Modal contends that the agency's determination that Modal's quotation was technically unacceptable was unreasonable because the agency failed to recognize that Modal was offering an equivalent item, as permitted by the RFQ. The protester argues that its quotation explained that the design of its shaker achieved the same system performance as that required by the RFQ, making the axial resonance specification "irrelevant" to the acceptability of its proposed item. In this regard, the protester acknowledges that its quotation clearly stated its shaker did not meet the 52 kHz axial resonance frequency requirement in the RFQ, but argues that it offered a "demonstrated equivalent" to that listed attribute or performance requirement of the shaker.² Comments at 2-3.

When reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Windstream Communications, B-409928, Sept. 9, 2014, 2014 CPD ¶ 271 at 3. Clearly stated solicitation technical requirements are considered material to the needs of the government, and a quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. 4D Sec. Solutions, Inc., B-400351.2, B-400351.3, Dec. 8, 2008, 2009 CPD ¶ 5 at 4. A vendor is responsible for affirmatively demonstrating the merits of its quotation and risks the rejection of its quotation if it fails to do so. Id.

NIST rejects Modal's interpretation of the RFQ, arguing that the RFQ's provision for accepting a "demonstrated equivalent" expressly referred to the listed "elements" of

² The protester argues in this regard that the purpose of limiting axial resonance is to prevent it from influencing measurements, and that the closed loop system Modal offered achieves the same goal by detecting and correcting for axial resonance--a method that Modal asserts is a surer method of preventing axial resonance from affecting calibration than merely limiting it to a specific value, as the RFQ does. Comments at 4.

the vibration calibration system, which, as discussed above, had to meet certain specifications; the provision did not allow a vendor to ignore the individual specifications in favor of some other measure that the vendor deemed equivalent. RFQ at 2. Here, the agency argues, the element in question was the shaker, and thus any demonstrated equivalent would have to meet the 13 minimum specifications listed for the shaker, including the axial resonance frequency specification. The agency maintains that, since Modal's shaker admittedly did not meet the specification for axial resonance frequency, it was not a demonstrated equivalent. Agency Supplemental Comments at 3. We agree.

In order to be deemed reasonable, an agency's interpretation of a solicitation provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Solec Corp., B-299266, March 5, 2007, 2007 CPD ¶ 42 at 2.

We find NIST's interpretation of the RFQ to be reasonable and consistent with the plain language of the RFQ, i.e., that the provision for offering a "demonstrated equivalent" pertained to the listed elements, and that the element in question here was the shaker, not the performance specification for the shaker, as the protester argues. Our review of the record here shows that the agency reasonably determined that Modal's quotation was technically unacceptable because it essentially took exception to the RFQ's stated minimum frequency requirement for axial resonance. NIST's determination in this regard is reasonable and consistent with the RFQ's evaluation criteria.

The protest is denied.

Susan A. Poling
General Counsel