U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: SMARTnet, Inc.

File: B-416047; B-416047.2

Date: May 23, 2018

Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for the protester.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated protester's price by using the grand total of all priced line items is denied where, notwithstanding protester's argument that the prices included optional services not required by the statement of work, its quotation price schedule did not identify any prices as optional.

2. Protest that agency improperly issued order to awardee whose quotation did not include fixed price for warranty as required by solicitation is denied where protester was not prejudiced by agency's waiver of the requirement for fixed price warranty because protester's quotation also failed to provide a fixed-price warranty.

DECISION

SMARTnet, Inc., of Leesburg, Virginia, a small business, protests the award of a contract to IMS Technology and Security, LLC, of Moraine, Ohio, under request for quotations (RFQ) No. F4FBK7284A101, issued by the Department of the Air Force, Air Force Materiel Command, for commercial products and installation to upgrade the physical access control system (PACS) at six buildings used by the Air Force Institute of Technology (AFIT) at Wright-Patterson Air Force Base, in Ohio. SMARTnet argues that the Air Force misevaluated its price, and thus violated the evaluation scheme in the RFQ by awarding the contract at a price higher than SMARTnet quoted, and that the Air Force improperly waived the requirement for a fixed-price warranty.

We deny the protest.

BACKGROUND

The circumstances underlying this protest involve two RFQs. The first, RFQ No. F4F5BK7284A101, issued by the Air Force on December 14, 2017, sought quotations by December 18. When concerns arose that the statement of work (SOW) was insufficient, the Air Force held a site visit, which potential vendors, including SMARTnet, attended.[1] SMARTnet also contacted the Air Force to identify issues in the RFQ which the firm contended were incompatible with the existing system and applicable regulations. The Air Force posted a series of nine amendments to the RFQ, revising the requirement and extending the due date for quotations, including a notice on January 10, 2018, stating that the requirement was being revised. When SMARTnet sought clarification directly from the Air Force about whether quotations would still be due later that day, the contract specialist replied that this first RFQ was canceled and "will be reposted in the future." Protest exh. B, Email from Contract Specialist to SMARTnet, Jan. 10, 2018, at 1.

The following day, on January 11, the agency issued the second RFQ directly underlying this protest, RFQ No. F4FBK7284A101, as a combined synopsis/solicitation for commercial items. The RFQ sought quotations on an unrestricted basis for essentially the same requirement as had the original RFQ, and stated that "Open Market pricing [wa]s required." RFQ at 3. The RFQ listed the items and quantities required, among which was a warranty, identified as follows:

> Qty of 1: Provide 1 year warranty for service, maintenance and parts for AFIT Access Control System[.]

AR, Tab 4, SOW, at 2; <u>see also</u> Agency Additional Documents (May 3, 2018), Bill of Materials Spreadsheet, at 1 (attachment to RFQ).

The reissued RFQ also included photographs of the site, specified a quotation due date of January 16, and indicated that an order would be issued to "the lowest price, technically acceptable, responsive, responsible" vendor. RFQ at 3. Both parties appear to agree that the RFQ, in effect, required the submission of fixed-price quotations.

The Air Force received three timely quotations, and proceeded with an evaluation, beginning with the apparent lowest-priced quotation. The lowest-priced quotation was rejected as technically unacceptable, so the contracting officer proceeded to the next-lowest, which was from IMS at a total price of $180,000.[2] The technical evaluation assessed the IMS quotation as technically acceptable.[3]

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[1] SMARTnet identifies itself as the incumbent contractor at the base.

[2] Prices have been rounded to two significant digits in this decision.

[3] The evaluation record is limited to an evaluation form with four criteria. The first criterion was for supplies (that the proposed product would "satisfy the Government's requirement"), and the three remaining criteria were for services (that the "proposal
(continued...)

SMARTnet did not submit a timely quotation, and explains that it had been misled by the implication of the contract specialist's email canceling the first RFQ without suggesting that a new RFQ was imminent. Instead, on January 18, SMARTnet submitted what it identified as an unsolicited proposal for the requirement. The Air Force initially informed SMARTnet that the agency would not consider its submission because it was, in essence, a late quotation. After further correspondence between contracting officials and SMARTnet, as well as questions posed by an agency ombudsperson, the Air Force decided that SMARTnet's submission would be considered. The contracting officer determined that SMARTnet's total price was $240,000 and, because IMS's evaluated price was lower and its quotation was evaluated as acceptable, the contracting officer did not ask for an evaluation of SMARTnet's quotation.[4]

On February 9, the Air Force informed SMARTnet that the contract had been awarded to IMS as the lowest-priced technically acceptable vendor. Following a debriefing, SMARTnet filed this protest.

PROTEST

SMARTnet argues that the Air Force misevaluated the prices of both firms. SMARTnet first emphasizes that the RFQ did not provide a pricing matrix, which necessitated that the agency properly evaluate each vendor's price. Protester's Comments at 4. SMARTnet argues that its technical quotation identified optional items and services that exceeded the SOW requirements in the quotation narrative, and that the Air Force nevertheless misevaluated its price by including the prices of those optional elements in its total price. Second, SMARTnet argues that IMS failed to submit a fixed price for warranty labor, and limited the extent of its warranty for parts. As explained below, we deny the protest because the record demonstrates that the Air Force reasonably calculated SMARTnet's evaluated price, and that neither IMS nor SMARTnet submitted

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demonstrate[d] an understanding" with hours and a skill mix that were "reasonable and necessary," that the material and other direct costs were "appropriate and reasonable," and that the vendor's planned travel was "sufficient, necessary and appropriate"). Agency Report (AR), Tab 18, Technical Evaluation Form for IMS, at 1. For each of the criteria, a box labeled "Meets the criteria" was selected. Id.

[4] We henceforth refer to SMARTnet's "unsolicited proposal" submission as a quotation under the RFQ. We express no view on that aspect since both parties appear to consider it so, and our Office has recognized that under simplified acquisition procedures, an agency may evaluate a late quotation where the RFQ does not contain a provision requiring it to reject late quotations, an award has not been made, and doing so is not unfair to other vendors. John Blood, B-274624, Dec. 19, 1996, 96-2 CPD ¶ 233 at 2. Were the situation otherwise, SMARTnet could not be considered a competitor under the RFQ, and its objections would thus lack a legal basis.

an unambiguous fixed price for the warranty, and thus SMARTnet was not prejudiced by the agency's waiver of the requirement for a fixed-price warranty.[5]

On the first issue, SMARTnet's quotation discussed the upgrade services it proposed to provide, which consisted of the replacement of PACS server software and installation services. The installation services were subdivided into five tasks, the last of which stated "[p]rovide break fix service on all upgraded parts." AR, Tab 8, SMARTnet Quotation, at 7. The narrative also stated that SMARTnet offered "the following OPTIONAL Maintenance/Support Services," which would provide maintenance service for all elements of the access control systems "from the [identity card] reader to the [computer] server" in connection with the PACS upgrade. AR Tab 8, SMARTnet Quotation, at 7-8.

SMARTnet's quotation provided a separate price schedule in which the firm listed the specific products and quantities to be used in the upgrade, followed by a materials subtotal. The quotation then provided a line for engineering services, followed by a "Sub Total Labor" price. Id. at 10-11. Next, the price schedule had a line for "1 Year On Call Maintenance Services," and a "Sub Total On Call Maintenance" price, after which was a line for factory training for AFIT personnel including travel and lodging, with a "Sub Total Factory Training" price. Id. at 11. The final price line was a "Grand Total" of $240,000. Id. The price schedule then listed five numbered notes, the first of which stated as follows:

> 1). SMARTnet will provide a 1 year break fix warranty parts and labor only related to this PACS upgrade.

Id.

SMARTnet argues that its quotation "included as separate line items several optional CLINs . . . that SMARTnet recommended," which the firm states "were added . . . at the specific request of the [Air Force] end-user." Protest at 6. One such option, SMARTnet argues, was for "on-call maintenance for older PACS equipment," which the firm states was for items not covered by the 1-year warranty on new equipment specified in the SOW. Id. SMARTnet also argues that the in-factory training CLIN was also optional but highly recommended. Id.

The Air Force argues that the contracting officer reasonably concluded that SMARTnet's quotation provided a total price of $240,000, and properly concluded that SMARTnet's price was higher than the acceptable quotation from IMS. The Air Force

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[5] We have also reviewed SMARTnet's other arguments, principally that the agency mischaracterized its quotation as acceptable but failed to have the evaluators review the quotation. They provide no basis to sustain the protest. In particular, the Air Force properly did not perform a technical evaluation of SMARTnet's quotation because the agency had already determined that IMS's quotation was both lower priced and technically acceptable.

points out that none of the prices listed on SMARTnet's price schedule identified any of the CLINs or prices as optional; instead, the quotation provided a single grand total price of $240,000.

Agencies are required by statute to consider the cost or price to the government of entering into a contract. 10 U.S.C. § 2305(a)(3); see also 41 U.S.C. § 3306(c)(1). The manner and depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Enterprise Servs., LLC et al., B-415368.2 et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 22.

The contemporaneous record does not support SMARTnet's claim that the Air Force's price evaluation was unreasonable. Our review of the firm's quotation has identified only four instances where the term "option" (or "optional") was used. First, as noted above, the quotation discussed "OPTIONAL Maintenance/Support Services," for "all AFIT access control system components located throughout the buildings where the PACS System upgrade is performed." AR, Tab 8, SMARTnet Quotation, at 7 (emphasis added). The second regarded performing service on any system component that was installed during "an existing contract or option year." Id. (emphasis added). The third and fourth appeared in the price schedule, but were references in the description of two out of the 19 items in the materials list: a software license providing for an "Enhanced Imaging Option," and a "Digital Video Enabler" optional license, neither of which was separately priced. Id. at 10 (emphasis added). In short, only one instance--the first--suggested that some element of SMARTnet's quotation was optional.

Even so, and despite the quotation's narrative reference to "OPTIONAL Maintenance/Support Services," the price schedule did not identify any of the listed prices as being options, or as relating to optional services or items. Id. at 10-11. As a result, this Office cannot agree with the fundamental premise of SMARTnet's argument that the quotation provided optional CLIN prices that should have been excluded from SMARTnet's total price in comparing it to IMS's. Rather, the Air Force reasonably concluded that all listed CLIN prices were properly added to produce the "Grand Total" price, and the agency reasonably used that price for comparison to IMS's. Accordingly, we deny this ground of protest.

After receiving the agency report, SMARTnet filed a supplemental protest, arguing that IMS's quotation did not provide a fixed price. Specifically, SMARTnet argues that IMS's quotation priced the required warranty separately from the installation of the upgraded system when it stated the warranty separately, followed by hourly labor rates for straight time, emergency time, and emergency after-hours time, which were in turn followed by the following statement:

> CATALOG PRICES FOR PARTS TOTAL VALUE NOT TO EXCEED $20,000 ANNUALLY

AR Tab 7, IMS Quotation, at 1-2.

Based on those statements, SMARTnet argues that IMS's quotation did not provide the 1-year warranty in its fixed price as the SOW had required, and that the evaluation of SMARTnet's and IMS's prices was therefore improper. Protester's Comments & Supplemental Protest at 2-3.

The Air Force argues that IMS's reiteration of the scope of its warranty followed by hourly labor rates and a reference to a $20,000 limit on parts prices was unrelated to the warranty, and merely provided irrelevant information about how IMS charges commercial customers. Accordingly, the Air Force argues that it properly issued the order to IMS at a fixed price, including the warranty, of $176,000.

The requirement to propose fixed prices is a material term or condition of a solicitation requiring such pricing; therefore, where a solicitation requests proposals (or quotations, as here) on a fixed-price basis, a price quotation that is conditional and not firm cannot be considered for award. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 4. Neither party suggests that the RFQ allowed vendors to provide anything other than a fixed price for the 1-year warranty.

Based on our review of the quotation, we cannot agree with the Air Force that IMS's quotation provided a fixed price that included labor and parts for a 1-year warranty. Instead, the quotation appears to anticipate that IMS will charge the listed labor rates for warranty labor, and will absorb only the first $20,000 in parts needed for warranty work (calculated using its catalog prices).

Our Office asked both parties to address whether SMARTnet was prejudiced by the agency's determination that IMS's quotation provided a fixed-price warranty because our review of SMARTnet's quotation led us to conclude that the protester had taken essentially the same exception. Specifically, SMARTnet failed to provide a fixed price for the warranty term of the RFQ in the form of the first of the notes on its price schedule (quoted above). SMARTnet responded that it included the warranty in its fixed price, which it contrasts with IMS's quotation. The Air Force contended that both firms' quotations provided fixed-price warranties.

Our review of the quotation shows that even though SMARTnet listed a fixed price for the line item labeled "1 Year On Call Maintenance Services," below the grand total line the quotation, it also provided a note stating that "SMARTnet will provide 1 year break fix warranty parts and labor only related to this PACS upgrade." AR, Tab 8, SMARTnet Quotation, at 11. In our view, the note rendered the pricing for the warranty at least ambiguous because it did not indicate how the warranty described in the note was to be priced.

Accordingly, based on our review of the record, both quotations were ambiguous as to the manner for pricing the warranty, and did not clearly provide a fixed price as the RFQ specified. So, in effect, the Air Force waived the requirement for fixed pricing of the warranty for both quotations. SMARTnet cannot show that it was competitively prejudiced by the Air Force's acceptance of IMS's quotation because the agency waived the same requirement for both vendors.[6] Competitive prejudice is an essential element of every viable protest, and where no prejudice is shown or otherwise evident from the record, we will not sustain a protest, even if the agency's actions arguably were improper. Avaya Gov't Sols., Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 6. SMARTnet has not shown that it was prejudiced by the Air Force's waiver of a requirement for a fixed-price warranty that the protester itself also failed to meet.

The protest is denied.

Thomas H. Armstrong
General Counsel

[6] In fact, unlike SMARTnet's warranty statement (which lacked any pricing information for its warranty work), IMS's warranty statement was followed by both hourly labor rates and a reference to catalog pricing for parts.