

Decision

Matter of: Mission Analytics, LLC

File: B-419339

Date: January 21, 2021

Michael Winters for the protester.

Stephenne L. Rhodes, for Rhodes Research, the intervenor.

John W. Torresala, Esq., Erin L. Hernandez, Esq., Graeme S. Henderson, Esq., and Ellen B. Clark, Esq., United States Marine Corps, for the agency.

Raymond Richards, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that the agency waived certain solicitation requirements under a brand name or equal procurement is dismissed as untimely.

DECISION

Mission Analytics, LLC, a small business of Falls Church, Virginia, protests the award of a contract to Rhodes Research, a small business of Las Cruces, New Mexico, under request for quotations (RFQ) M67399-20-Q-0038, issued by the United States Marine Corps, for audio/visual components and installation services. The protester argues that the awardee's proposal fails to meet the salient characteristics established by the solicitation.

We dismiss the protest.

BACKGROUND

The agency issued the solicitation on June 15, 2020, as a small business set-aside, using the procedures of Federal Acquisition Regulation (FAR) part 12, Acquisition of Commercial Items, and part 13, Simplified Acquisition Procedures. Agency Report (AR), Exh. 1, RFQ at 15, 36.¹ The agency sought the acquisition, installation, and configuration of interactive digital displays within the Marine Corps

¹ The page numbers refer to the Adobe PDF page numbers of the redacted report submitted by the agency.

Communications-Electronics School classrooms. *Id.* at 25. As relevant here, the agency sought the following equipment on a brand name or equal basis, with the following pertinent salient characteristics:

Contract Line Item Number (CLIN)	Component List, Brand Name or Equal
0005	Christie Terra TXO 102 Transmitter or equal Salient Characteristics: -Software Defined Video-over-Ethernet (SDVoE) Compliant -Network: 10 Gigabyte (G) Ethernet
0006	Christie Terra RXO 101 Receiver or equal Salient Characteristics: -SDVoE Compliant - Network: 10G Ethernet
0007	Christie Terra SCO 100 Controller or equal: -SDVoE Compatible

Id. at 21-23, 27.

Vendors were to provide a technical proposal which set forth a technical approach and the parts to be provided along with the specifications (including the product name, make, model, warranty details, and country of manufacturing). *Id.* at 34. If the vendor proposed an equal product, it was required to submit literature depicting the full product specifications to demonstrate the product conforms to the salient characteristics of the listed brand name. *Id.* The solicitation advised that award was to be made on a lowest-price basis, considering technical capability, past performance and price. *Id.* at 36. A quotation would be considered technically acceptable if it met the requirements of the solicitation, including the salient characteristics of the brand name listed. *Id.* at 37.

The agency evaluated only the Rhodes Research quotation, which was the lowest-priced quotation, and concluded it “quoted equivalent products to conform to the salient characteristics of the brand name requested.”² AR, Exh. 4, Redacted Simplified Acquisition Award Decision at 77. The agency also concluded that Rhodes Research had acceptable past performance. *Id.* On July 30, the agency posted a notice in the System for Award Management (SAM) that it had issued the award to Rhodes Research in the amount of \$60,408. AR, Exh. 5, Award Notice. On August 7, Mission Analytics requested a technical debrief, but did not receive a response from the agency. Req. for Dismissal, Exh. 7, Contracting Officer’s Statement (COS) at 108. On

² Because Mission Analytics proceeded with its protest *pro se*, and therefore no protective order was issued in this protest, protected information cannot be included in this decision. Accordingly, our discussion of some aspects of the evaluation and the awardee’s quotation is necessarily general to avoid reference to non-public information.

August 10, Mission Analytics filed a protest with the agency concerning modifications to its quotation and the agency suspended performance on the contract even though some of the hardware and software had been delivered. *Id.* at 108-110. The agency concluded the protest was untimely on August 17. *Id.* at 109.

On September 14, Mission Analytics filed another protest with the agency arguing that the awardee's quotation did not meet the salient characteristics of the solicitation. AR, Exh. 7, Protest at 103. Mission Analytics explained that it learned on September 11, after speaking with a representative of Christie products (the brand name in the solicitation), that the awardee had proposed a Creston network solution. *Id.* Mission Analytics stated that it is an authorized dealer of Creston products and is aware that the Creston network system "is not an [SDVoE] 10G" network solution. *Id.* Mission Analytics argued that the Creston solution does not meet the brand name or equal salient characteristics set forth in CLINs 0005 (transmitter), 0006 (receiver), and 0007 (controller) because they are not 10G Ethernet or SDVoE compliant. *Id.*

On October 5, the agency concluded the protest was untimely. *Id.* at 98-100. According to the agency, Mission Analytics should have known the basis of the protest at the time the agency posted the award notice in SAM on July 30. *Id.* Mission Analytics requested reconsideration and argued that it could not have known the basis of its protest on July 30 or any time before September 11. The agency denied the request for reconsideration and Mission Analytics filed this protest with our Office on October 15.

DISCUSSION

Mission Analytics argues that the awardee offered a Creston solution which does not meet the 10G or SDVoE requirements set forth in CLINs 0005 (transmitter), 0006 (receiver), and 0007 (controller). Mission Analytics explains that it was prejudiced by the agency's waiver of the salient characteristics. Protest, Exh. 1, Emails from Mission Analytics at 2.

The agency argues that the protest here is untimely because the agency-level protest was untimely filed.³ Specifically, the Marine Corps posted the award notice in SAM on July 30 and Mission Analytics did not file its agency-level protest until September 14, more than 10 days after it learned of the award. The agency argues that because Mission Analytics was an authorized vendor of Christie products, the brand name in the solicitation, the protester "could have obtained information about the awardee's equipment from Christie" earlier than the September 11 call with the Christie

³ The agency also argues that the protest is academic because on October 9, the awardee installed the equipment. Req. for Dismissal at 4-5. The protest is not rendered academic by performance, however, because if it were sustained, our Office could recommend the reimbursement of bid preparation costs and costs associated with filing and pursuing the protest. *See Fitnet Purchasing All.*, B-410263, Nov. 26, 2013, 2014 CPD ¶ 344 at 11.

representative. See Req. for Dismissal at 7-8 (*quoting* Agency Protest Decision); Memorandum of Law (MOL) at 5-6.

The protester explains that the award notice did not state the equipment to be supplied by the awardee. Resp. to Req. for Dismissal at 2. Further, the protester explains that the Christie representative was not “aware of the awardee’s equipment list until” September 9, and informed the protester of this matter during a phone call on September 11. *Id.* The protester further states that there are 15 manufacturers that are members of the SDVoE consortium that could have provided the 10G SDVoE equipment that meets the solicitation’s requirements. *Id.* Therefore, Mission Analytics explains that it could not have known the awardee would be providing a Creston product, and not a Christie product, because the awardee could have used any of these 15 manufacturers. *Id.* Accordingly, the protester explains that there was nothing in the award notice or otherwise--until the September 11 call with the Christie representative relating to a different contract--that would reasonably had led anyone to believe the awardee provided a solution that did not meet the solicitation’s brand name or equal requirements.⁴ *Id.* at 2-3.

We agree with the Marine Corps that the September 14 agency-level protest was not timely filed. The protester itself states that “[f]or the subject CLIN[s], 1G AV-over-IP devices are about half the price of 10G SDVoE AV-over-IP prices. [The] Net difference in quote price using 1G devices is greater than the delta between my bid and the award.” Protest, Exh. 1, Emails from Mission Analytics at 2; see *also id.* at 1 (“a 10G data rate and a 1G data rate literally differ by an order of magnitude”). The protester also states it was not aware of the manufacturer of the awardee’s components at the time the agency posted the award notice in SAM. However, by July 30, the date the agency posted notice of award in SAM, the protester was aware of the awardee’s price, which according to the protester was so low that the awardee could not have offered components that met the salient characteristics set forth in the solicitation. As a result, the protester knew or should have known its basis of protest on July 30. Accordingly, since Mission Analytics’s initial protest to the agency was not timely filed, its subsequently filed protest with our office was also not timely filed. 4 C.F.R. § 21.2(a)(3).

In the alternative, the agency argues that the protest is untimely because it challenges patent ambiguities in the solicitation. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error. *Ashe Facility Servs., Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 11. Where a patent ambiguity is not challenged prior to the submission of quotations, we will dismiss as untimely any subsequent challenge to the meaning of the terms. 4 C.F.R. § 21.2(a)(1).

The protester argues the solicitation required each component of the system meet

⁴ Mission Analytics states that its contract for similar work had been delayed due to COVID-19 restrictions and it was not until late August that those restrictions were lifted and contractors were allowed on base, which is why the call to the Christie representative occurred in September. See AR, Exh. 6, Protest at 82, 97.

SDVoE 10G requirements. See Comments at 16 (a Creston equipment list would show that the components are not 10G or SDVoE compliant). The protester contends that “[o]nly a 10G system approved by the SDV[o]E Alliance is SDV[o]E compliant.” *Id.*

The agency explains that the salient characteristics requiring 10G Ethernet functionality were intended to reflect future network functionality and not intended, as the protester argues, to reflect salient characteristics of the individual components. Agency Response, Dec. 14, 2020, at 1. The agency explains that where the solicitation stated, for CLINs 005 (transmitter) and 0006 (receiver), “Network: 10G Ethernet,” the solicitation was seeking components that could be utilized in a future 10G environment; it was not the intent of the agency to have the contractor create a full 10G network. *Id.*; see also AR, Exh. 8, COS at 1-2.

In support of its argument, the agency refers to figure 1 in the solicitation, which depicts the classroom connectivity layout. RFQ at 28. The figure shows a 10G network switch and 10G fiber optic cables with connectors to the receivers, transmitters and controllers. *Id.* According to a question and answer, issued as an amendment to the solicitation, the government stated the figure was an example configuration and that the government would furnish the network switch and the fibers, the make and model of which was unknown. AR, Exh. 3, Amend. 02 at 75-76. The agency explains that this was “intended to allow the Agency to utilize 1G or 10G equipment options, using currently installed copper wiring or future optical fiber,[] within a future 10G Ethernet backbone, so as to permit the [Marine Corps] to upgrade its system over time.” Agency Resp., Dec. 14, 2020, at 2.

We agree that there is a patent ambiguity in the solicitation which should have been protested prior to the receipt of quotations. Although the protester argues that it is irrelevant that “a 1G system can run on a 10G switch,” we disagree. See Comments at 13. As the agency notes, the salient characteristics of the protested CLINs only state “Network: 10G Ethernet” and nothing more, and figure 1 depicts a 10G network switch and cables, but not 10G components.⁵

⁵ In addition, we note that the agency provided the awardee’s quotation for *in camera* review. The quotation contained an equipment list and specifications. AR, Exh. 14, Rhodes Technical Proposal. The agency explains, citing portions of the awardee’s quotation for support, that the Creston components are capable of operating a 10G network via a 10G network switch. Agency Resp., Dec. 4, 2020, at 2.

Further, with respect to the requirement for SDVoE compliance, there is nothing in the solicitation that requires the manufacturer be part of the SDVoE alliance. In addition, the agency explains that the components are capable of providing SDVoE compliance through a free downloadable module. AR, Exh. 12, Decl. of Deputy Communications Officer at 124; Exh. 11, SDVoE Alliance Announcement at 121; MOL at 8. For all of these reasons, the protest is dismissed.

The protest is dismissed.

Thomas H. Armstrong
General Counsel