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**Comptroller General
of the United States**

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

Decision

Matter of: Newsun, Inc.

File: B-405245

Date: September 28, 2011

Eric M. Sundin for the protester.

Pamela J. Mazza, Esq., Isaias Alba IV, Esq., and Patrick Rothwell, Esq., Piliero Mazza PLLC, for Standard Communications, Inc., an intervenor.

Kathleen K. Barksdale, Esq., General Services Administration, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's quotation as unacceptable is denied where solicitation, as amended to include agency's answers to vendor's questions, specified that vendors were required to propose a specific type of telephone technology, and protester's approach that proposed a different technology with "adapters" was therefore reasonably evaluated as unacceptable.

DECISION

Newsun, Inc., doing business as Internal Computer Services (ICS), of Richmond, Virginia, a small business, protests the issuance of a purchase order to Standard Communications, Inc., of Hume, Virginia, by the General Services Administration (GSA), under request for quotations (RFQ) No. R3104379, for replacement of the voice telephone system at the Wilmington, Delaware Veterans Administration (VA) Medical Center, and nine satellite locations. ICS argues that its quotation was unreasonably rejected as unacceptable.

We deny the protest.

On March 9, 2011, the GSA posted the RFQ on FedBizOpps.gov, seeking quotations from service-disabled veteran-owned small business (SDVOSB) firms, for placement of a single commercial item purchase order. The RFQ requested quotations consisting of a technical volume describing the offeror's technical solution and past performance, and a price volume detailing the offeror's fixed price. The

RFQ specified that an order would be issued to the firm that provided the lowest-priced technically acceptable quotation. RFQ at 1.

The RFQ Statement of Work (SOW) specified the quantities and types of telephone equipment needed for each location. As relevant to the protest issues, for the Wilmington, Delaware VA Medical Center, the SOW used a table, which specified several types of telephones, and corresponding quantities for each. For “Digital Multi-Line Telephones” the table specified a total quantity of 1067, while a separate line requested “VoIP [Voice over Internet Protocol] Telephones” and a total quantity of 358. SOW at 6 (Table 1.1.2.1).

In response to vendor questions, on April 1 the GSA posted on FedBizOpps.gov a set of vendors’ questions and the agency’s answers.¹ Among them was the following question about the acceptability of offering VOIP phones (sometimes referred to simply as “IP” phones) in place of the multi-line digital phones:

[Question] 4: Table 1.1.2.1 Quantity of Multi-Line digital phones = 1067. Can IP phones be substituted in place of Digital Multi-Line phones?

[] ANSWER: Multi-line digital phones using TDM [Time Division Multiplexing] technology is required; the site’s current data network cannot support a full VOIP implementation. No new PoE [power over Ethernet] switches are required for this task. This task will re-use existing PoE switches.

RFQ amend. 1, Site Survey Questions & Answers, at 1 (Question 4).

The GSA received timely quotations from eight firms, including ICS and Standard Communications. AR, Tab D, Technical Evaluation Report, at 1. In its quotation, ICS proposed to supply VOIP telephones to meet the requirement for 1067 multi-line digital phones. Protester’s Supplemental (Supp.) Comments at 6; AR, Tab E, ICS Technical Quotation, at 14-15, 22. ICS’s quotation also provided what ICS refers to as “adapters”² that would be installed in the communications utility areas of the Wilmington VA Medical Center so that the VOIP telephones would function on the

¹ An amended set of questions and answers was posted on April 12, which repeated without change the question and answer relevant to this protest.

² Although ICS’s quotation provided further technical specifications regarding the “adapters” and other aspects of the firm’s technical solution, our discussion here is necessarily general because our Office did not issue a protective order (since ICS was represented by its chief executive officer in this protest), and because ICS has identified the details of its technical solution as proprietary information.

VA telephone network. Protest at 3; AR, Tab E, ICS Technical Quotation, at 26. ICS quoted a total price of \$1,858,352. Protest at 2-3.

GSA reviewed the quotations under the simplified procedures for evaluation of commercial items in Parts 12 and 13 of the Federal Acquisition Regulation. The GSA evaluation report dated May 25 explains that ICS's quotation proposed a solution that used VOIP technology, contrary to the SOW specification of TDM technology, for the required 1067 digital multi-line telephones. AR, Tab D, Technical Evaluation Report, at 4. The evaluation also stated that one of ICS's two past performance reference projects was not similar in size and scope to this requirement. Id. The evaluation rated ICS's proposal as "Does Not Meet [requirements]" for both its telecommunications solution and its past performance, and rated the proposal "Does Not Meet" overall. Id. at 2, 4.

The evaluators also rated the quotations of Standard Communications and three other firms as "Meets" (meaning acceptable) for all requirements.³ Id. at 1. On June 10, the GSA issued a purchase order to Standard Communications at an evaluated price of \$1,947,537. Protest at 2.

ICS then filed this protest within 10 days of the issuance of the purchase order. Protest at 1.

DISCUSSION

ICS protests that the GSA unreasonably evaluated the firm's quotation as unacceptable for both its technical solution and the firm's past performance. We consider the evaluation of the technical solution first and, as explained below, since we conclude that the GSA evaluation reasonably found ICS's proposal unacceptable, we do not consider the firm's remaining challenges.

As noted above, the procurement was conducted under the simplified procedures for evaluation of commercial items. Simplified acquisition procedures are designed, among other things, to reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002; 41 U.S.C. § 3305 (Supp. IV 2010). When using these procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate quotations in accordance with the

³ ICS does not challenge the evaluation of the quotation submitted by Standard Communications, and therefore we will not discuss it further here.

terms of the solicitation. In reviewing protests of an allegedly improper simplified acquisition evaluation and award selection, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Russell Enters. of N. Carolina, Inc., B-292320, July 17, 2003, 2003 CPD ¶ 134 at 3.

ICS argues that its proposed technical solution will provide a superior result within the constraints of the VA's existing telecommunications infrastructure. ICS argues that although purchasers such as the GSA often believe that existing wiring is only suitable for TDM telephones, through the use of the "adapter" technology proposed by ICS, VOIP telephones can operate over an existing voice network. Thus, ICS argues that the GSA's underlying concerns regarding the limits of the site's current data network may not be valid. ICS Revised Comments at 5-6.

The GSA responds that the agency made clear through its response to Question 4, quoted above, that an acceptable technical solution was required to propose "Multi-line digital phones using TDM technology," and that the current data network "cannot support a full VOIP implementation." RFQ amend. 1, Site Survey Questions & Answers, at 1 (Question 4). Since ICS's quotation clearly proposed VOIP telephones for the 1067 multi-line digital phones, regardless of how it did so, the quotation did not comply with this clearly-expressed requirement, and was therefore properly evaluated as technically unacceptable.

In our view, the GSA's evaluation was reasonable and consistent with the express terms of the RFQ. In particular, ICS acknowledges that its digital multi-line telephones use VOIP technology, rather than TDM technology. ICS Supp. Comments at 6. To the extent ICS focuses much of its argument on the proposition that its technical solution will function on the existing VA network, or is superior to the "obsolete" TDM technology specified in the RFQ, ICS's arguments are, at best, an untimely challenge to the terms of the RFQ.⁴ As a result, even accepting ICS's argument that its solution will allow VOIP phones to function on the existing wiring, ICS does not meaningfully dispute that its approach was to, in fact, substitute VOIP telephones for TDM telephones for the 1067 digital multi-line telephones for the Wilmington VA Medical Center. The RFQ, as amended by question and answer

⁴ Thus, to the extent that ICS argues that the GSA's answer to question 4 improperly requires TDM phones, when ICS's system using VOIP technology would be satisfactory (or even superior), that argument is a challenge to the terms of the RFQ. Since it was first raised in this protest after submission of offers, it is untimely. A challenge to the terms of the RFQ, including the answers to vendor questions released in amendments 1 and 2, is untimely where it is filed after the due date for quotations. 4 C.F.R. § 21.2(a) (2011).

No. 4 prohibited such a solution. Accordingly, GSA reasonably rejected ICS's quotation as unacceptable.

The protest is denied.⁵

Lynn H. Gibson
General Counsel

⁵ We do not consider ICS's additional challenges because its technical approach was reasonably evaluated as unacceptable, making it ineligible for award. Therefore the firm was not prejudiced by any error in the evaluation of past performance.