



Decision

Matter of: Kingdomware Technologies

File: B-405242

Date: September 30, 2011

LaTonya Barton for the protester.
Matthew V. Edwards, Esq., Department of Veterans Affairs, for the agency.
Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that vendor's quotation was technically unacceptable where it failed to comply with a material solicitation requirement

DECISION

Kingdomware Technologies of Waldorf, Maryland, protests the decision by the Department of Veterans Affairs (VA) not to award the firm a purchase order under request for quotations (RFQ) No. VA-261-11-RQ-0417, to provide emergency notification services for the VA's Palo Alto Health Care System (VAPAHCS).

We deny the protest.

The VAPAHCS consists of three inpatient facilities and seven outpatient clinics that provide services to veterans within the Sierra Pacific Network. If and when an emergency occurs, all pre-determined VAPAHCS employees are notified through email, text messaging, and voice messaging. To this end, the agency issued the RFQ to obtain

180,000 Domestic Voice Minutes per year with unlimited email,
Blackberry PIN and SMTP text messages[.]

RFQ at 3.

The RFQ sought quotations from vendors holding contracts under the General Services Administration Federal Supply Schedule for information technology software services. The RFQ, issued June 10, 2011, was posted on FedBid.com, an

on-line reverse auction procurement system.¹ The reverse auction was scheduled for June 17 and vendors were advised that quotations would be evaluated for technical acceptability and price. A fixed-price purchase order would be issued to the lowest-priced vendor whose quotation conforms to the terms of the RFQ. RFQ at 5.

As relevant here, prospective vendors were advised that questions concerning this procurement should be submitted at the earliest possible time to allow the agency to respond. Vendors were also advised that questions not received within a reasonable time prior to close of the solicitation might not be considered. See FedBid Bid Results (available online at www.sellers.fedbid.com/seller/bidResultsDetails).

On June 17, FedBid conducted the reverse auction. Kingdomware, along with SWN Communications, Inc. (SWN) participated in the reverse auction. At the conclusion of the auction, Kingdomware's total bid price was lower than the price submitted by SWN. Agency Report (AR) at 2.

As part of its quotation, Kingdomware included an attachment in which the protester stated, among other things, that it had sent questions concerning this procurement through FedBid and had also left a voicemail message for the contracting officer. Since its questions were not answered, the protester stated that it made certain "assumptions in connection with our GSA Schedule bid." AR exh. 4, Kingdomware Attachment to FedBid.com.

The relevant assumptions were

- Because Blackberrys support SMS delivery just as other smartphone devices, that this is allowable.
- We are also assuming that SMS delivery to the provider is allowable because this capability is much faster than using SMTP text messages.

Id.

¹ FedBid, Inc. is a commercial online procurement services provider that runs a website at FedBid.com which, among other things, conducts reverse auctions. FedBid refers to procurements conducted through its system as "buys" and a participant in the reverse auction is said to submit a "bid." See FedBid FAQs (available online at www.fedbid.com/buyers/faq). In their filings, the parties refer to the reverse auction at issue here as both a buy and a RFQ, and refer to the competitors' submissions here as both bids and quotes. For clarity, we refer to the solicitation as an RFQ and the firms' submissions as quotations.

After reviewing Kingdomware's quotation, the VA concluded, based on the protester's "assumptions," that the firm offered "SMS delivery" of text messages rather than the required SMTP text messages, and the quote was therefore viewed as unacceptable. The VA then issued the order to SWN and this protest followed.

Kingdomware takes issue with the agency's evaluation of its quotation, arguing that its quotation was in fact based on providing SMTP messaging. Specifically, the protester asserts that, consistent with the bidding requirements for FedBid, the firm expressly acknowledged "compliance with all of the terms of the buy," which implicitly included providing SMTP messaging. Protester's Comments at 4, 11. The protester insists that it "cited SMS in our assumptions because this capability exceeds" that of SMTP messaging, *Id.* at 5, and maintains that the firm's ability to provide both SMTP messaging and SMS messaging demonstrates that it meets and exceeds the agency's technical capability requirements. We disagree.

Here, the quoted portion of the attachment included in Kingdomware's quotation identified a text messaging capability other than that specified in the RFQ which the protester assumed was "allowable" for this procurement. At a minimum, the Kingdomware quotation is unclear as to whether, as the protester claims, it could be read to indicate that the firm would provide the SMTP message capability, SMS messaging, or both. Since Kingdomware had the burden of unequivocally demonstrating its compliance with the terms of the RFQ, yet failed to do so, we have no basis to question the reasonableness of the agency's evaluation. A quotation which fails to conform to a material solicitation term and condition should be considered unacceptable and may not form the basis for an award. CAMS Inc., B-292546, Oct. 14, 2003, 2003 CPD ¶ 191 at 3; see Rel-Tek Sys. & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3.

The protest is denied.²

Lynn H. Gibson
General Counsel

² In its comments on the agency report, Kingdomware also challenges the agency's failure to conduct discussions with it concerning its quotation, citing Federal Acquisition Regulation (FAR) § 15.306. Protester's Comments at 6. The protester's argument in this regard is untimely because it was first raised more than 10 days after the protester knew, or should have known of this basis of protest, see Bid Protest Regulations § 21.2(a). The argument is also misplaced since this procurement was not conducted pursuant to FAR Part 15.