



Decision

Matter of: Applied Visual Technology, Inc.

File: B-401804.3

Date: August 21, 2015

Marcus Carter, Government Contractor Services, for the protester.
Kristen M. Nowady, Esq., General Services Administration, for the agency.
Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's determination that the protester's offer did not satisfy the solicitation's requirements is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Applied Visual Technology, Inc. (AVT), a small business, of Orlando, Florida, protests the rejection of its offer submitted in response to solicitation No. TFTP-MC-000874-B, which was issued by the General Services Administration (GSA) for the award of contracts under multiple award schedule No. 874, for mission oriented business integrated services (MOBIS). AVT argues that GSA erred in determining that the protester's proposed technical offering failed to satisfy the solicitation's requirements for customizable training devices.

We deny the protest.

BACKGROUND

The solicitation at issue here is "Refresh 22" of the solicitation for schedule No. 874 of the Federal Supply Schedule (FSS), which is a standing solicitation for the provision of a full range of professional business services and related support products for consulting, facilitation, surveys, training, acquisition management

support, and integrated business program support services. Solicitation at 1.¹ Each GSA schedule, including schedule No. 874, is composed of special item numbers (SIN), which are used to categorize or group similar products and services under the schedule. See Bridges Sys. Integration, LLC, B-411020, Apr. 23, 2015, 2015 CPD ¶ 144 at 5. The solicitation states that the offeror must provide a “full and broad array of proposed products [or] services,” and that an offer for limited product or service offerings would not be accepted “unless it represents a total solution for the proposed [SINs].” Solicitation at x. The solicitation further provides that services not authorized for purchase under the MOBIS contract are those services “where the primary purpose or the preponderance of work performed is specifically covered by another GSA Schedule.” Id. at 2.

SIN No. 874 9 – Off-the-Shelf Training Devices and Training Materials: Print, Electronic, Audio-Visual, Multi-Media, and Simulation Training Devices (the training devices SIN) is relevant to the issues in this protest. Under the training devices SIN, offerors can propose to supply two types of training devices:

Off-the-Shelf Training Devices: Proposed training devices shall be commercially-available off-the-shelf training [COTS] devices available as stand alone or ancillary to other services being offered on this schedule. They can include software programs, teaching machines and devices, simulators such as driving simulators, flight simulators, etc., prepared printed instructional material, medical models and simulators, prepared audio and visual instruction material and multimedia program kits.

Customizable Training Devices: Proposed customized training devices and simulators shall be in addition to the or the result of planning, designing, and/or producing customized training products that include but are not limited to print, audio/visual, audio, digital formats and emerging technologies. Proposed training devices

¹ The FSS program is directed and managed by the GSA, and gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation § 8.402(a). GSA solicitations for FSS contracts, including for the MOBIS contract, typically do not have a closing date, but are open indefinitely (or “standing”), and are updated as required to include the most current contract clauses or to ensure that the solicitation incorporates changes to law and regulation that have occurred since the previous “refresh” was issued. See Solicitation at 58; Bridges Sys. Integration, LLC, B-411020, Apr. 23, 2015, 2015 CPD ¶ 144 at 2 n.1.

shall directly train students in a specific subject matter(s) or assist in the training of a specific subject matter(s).

Solicitation at 8.

On November 17, 2014, AVT submitted an offer for customizable training devices in response to SIN 874 9 of the solicitation. Agency Report (AR), Tab 2, AVT Offer (Nov. 17, 2014), at 3. On March 19, 2015, GSA notified AVT that its proposal was rejected. As relevant here, GSA found that “[u]pon review of this offer, it has been determined that these services may be better suited for” inclusion on another FSS contract. Protest, exh. No. 1, GSA Letter to AVT (Mar. 19, 2015), at 1. The letter also reiterated the solicitation’s requirement that an offeror must provide a full and broad offering of services or products, and noted that AVT only offered services under five proposed labor categories. Id. at 2. Following an unsuccessful agency level protest, AVT filed this timely protest before our Office.

DISCUSSION

AVT challenges the GSA’s evaluation of its offer as not satisfying the applicable SIN definition for customized training devices. For the reasons that follow, we find that the agency’s evaluation of the protester’s offer was reasonable and in accordance with the terms of the solicitation, and deny the protest.²

In reviewing protests challenging the evaluation of an offeror’s proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accordance with solicitation criteria and applicable procurement statutes and regulations. Goldbelt Falcon, LLC, B-410251, Nov. 21, 2014, 2014 CPD ¶ 355 at 4-5. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3-4. In this regard, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. ARBEIT, LLC,

² AVT raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester’s arguments and find that none provides a basis on which to sustain the protest. For example, the protester challenges the reasonableness of the contracting officer’s suggestion that AVT’s proposed services may be more appropriate under other FSS contracts identified by the contracting officer. See Protest (May 15, 2015) at 5-6. This challenge, however, is not relevant to the question of whether the contracting officer reasonably concluded that AVT’s offer did not satisfy the requirements of this solicitation.

B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4; Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 5.

AVT primarily argues that its offer meets the applicable standard for customized training devices because the protester will be providing services directly in support of the deployment or integration of its commercial airplane simulation-related databases. See, e.g., Protest (May 15, 2015) at 3 (“The existing AVT terrain database training products are products. They can be purchased separately or as part of a customized job to upgrade an existing terrain database product.”); id. at 9 (describing attached product literature showing a representation of an AVT database being used in a flight simulator). The protester argues that its offer included adequate detail to convey that the protester would furnish both the simulator databases, as well as support services.

GSA responds that, notwithstanding the clearer articulation in AVT’s protest submissions that the protester intended to provide both its simulation databases and associated services, AVT’s offer submitted in response to the solicitation only proposed to provide technical services under five labor categories. See Contracting Officer’s Statement of Facts (COSF) (June 15, 2015) ¶¶ 4, 7; Agency Supp. Response (Aug. 5, 2015) at 1 (arguing that AVT’s offer “did not articulate any end product the Federal customer would receive”). The agency argues that (1) AVT’s offer to provide only support services, without representing that AVT’s commercial databases would be delivered to the federal customer, fails to meet the applicable SIN requirements, (2) the proposed services would properly be covered under a different, service-related GSA FSS contract, and (3) the offer fails to provide a broad array of goods or services as required by the solicitation. See COSF (June 15, 2015) ¶¶ 4-5, 9; AR at 3-4. Based on our review of the record, we find that GSA reasonably concluded that the information in AVT’s offer did not clearly set forth the full scope of the protester’s intended offering.³

³ GSA could have engaged, but was not obligated to engage, in discussions with AVT to clarify the scope of its proposed offering under the applicable SIN. The solicitation advised offerors that the agency reserved the right to make award or reject a proposal without discussions. Solicitation at 66. A contracting officer’s discretion in deciding not to hold discussions is quite broad. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5. There are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions, and there is also no requirement that an agency document its decision not to initiate discussions. L-3 Servs., Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 14. As a result, an agency’s decision not to initiate discussions is a matter that we generally will not review. Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 13.

AVT does not point to any specific representation in its technical or price offers regarding its intention to deliver both a tangible product (i.e., the database software) and associated services. To the extent AVT's protest submissions more clearly articulate the nature of its intended offering as including both the commercial AVT databases and support services, our review is limited to AVT's offer, as submitted. In this regard, contracting agencies are not responsible for evaluating information that is not included in a quotation or proposal. Planned Sys. Int'l, Inc., B-292319.3 et al., Oct. 30, 2003, 2003 CPD ¶ 198 at 5. Turning to its offer, the protester effectively argues that the agency should have reasonably inferred the protester's intentions from various statements in the offer.

For example, AVT argues that the following narrative in its offer for a representative past performance project indicated that the protester proposed to provide both a tangible product and related services:

The [United States Air Force (USAF)] has multiple COTS flight simulators for the purpose of training pilots. As a result of long term planning to sustain, upgrade, and customize these training devices, the USAF retained the offeror for its expertise. The offeror is providing sustainment and upgrades to the simulators and is customizing the simulation database to improve upon realism of terrain simulation using audio/visual and digital formats.

Protest (May 15, 2015) at 7-8 (quoting AR, Tab 2, AVT Technical Proposal (Nov. 17, 2014), at 10).

The agency found that the narrative suggested that the protester only provided customization and support services for existing government-owned training devices, not the delivery, integration, and/or customization of AVT-furnished databases. See Protest, exh. No. 3, Agency-Level Protest Decision (May 5, 2015) at 4. We find that GSA reasonably determined that the narrative did not clearly indicate that the protester was furnishing and customizing or integrating its own databases.

AVT also argues that the sample invoices, labor category descriptions, and a labor category-to-invoice crosswalk submitted with the protester's offer reflect that AVT personnel performed database-related tasks on representative projects. See AVT Supp. Comments (Aug. 5, 2015) at 1-2.⁴ The inclusion of this information in the

⁴ AVT also argues that the sample invoices submitted with its offer reference another invoice for a purchase order related to one of the representative sample projects. See AVT Supp. Comments (Aug. 5, 2015) at 1 (citing, AR, Tab 2, AVT Sample Invoices, at 4). The referenced invoice, submitted for the first time with the protester's supplemental response, reflects that AVT sold multiple database "enhancements" to a customer at fixed unit costs. See id., exh. No. 1, Purchase
(continued...)

offer, however, does not undermine the agency's conclusion that the offer anticipated the provision of services only, where the offer did not include any clear product description, delivery commitment, or pricing information for the databases that AVT represents were delivered under the representative projects and/or will be delivered under orders issued against the resulting FSS contract.

Although the significance of these excerpts from AVT's offer and similar pieces of information relied upon by the protester becomes clearer when considered in the context of AVT's representations made in its protest submissions, it was incumbent upon AVT to submit a clear and adequate proposal for GSA's evaluation without relying on such further clarifications. See Planned Sys. Int'l, Inc., supra. On this record, we cannot conclude that GSA's evaluation of AVT's offer was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel

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Order No. 0000021165 rev. 2, at 1-2. This invoice, however, was not submitted to GSA as part of the protester's offer, and therefore we do not find the invoice relevant to our review of the agency's contemporaneous evaluation.