



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: NCS Technologies, Inc.

File: B-405192.2

Date: October 27, 2011

Thomas K. David, Esq., David, Brody & Dondershine, LLP, for the protester.
Dennis Adelson, Esq., Department of Labor, for the agency.
Kenneth Kilgour, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that price evaluation improperly included a consideration of life cycle costs is denied where the agency retains the discretion to consider these costs.

DECISION

NCS Technologies, Inc., of Gainesville, Virginia, protests the terms of request for quotations (RFQ) No. DOL111RQ21260 issued by the Department of Labor (DOL) for desktop and laptop computers and peripheral equipment. The protester alleges that the agency improperly included the consideration of life cycle costs¹ (LCCs) in its price evaluation.

We deny the protest.

The solicitation at issue was posted to the General Services Administration's (GSA's) E-Buy System and was open to all Schedule 70, information technology (IT), GSA Federal Supply Schedule (FSS) contract holders. As originally issued, DOL sought quotations for the award of a blanket purchase agreement to supply Dell desktop and laptop computers, and other peripheral equipment. The RFQ provided that the BPA will have a 1-year base period and four 1-year options. Award was to be made to the firm with a technically acceptable quotation at the lowest evaluated price.

¹ The Federal Acquisition Regulation (FAR) defines LCCs as "the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of items being acquired." FAR § 7.101.

NCS initially protested the RFQ's requirement for Dell computers as overly restrictive, the agency elected to take corrective action, and we dismissed that protest as academic. See NCS Technologies, Inc., B-405192, July 28, 2011. DOL revised the RFQ to delete all references to the Dell-brand requirement. The agency asserts that its decision to permit vendors to offer other than Dell computers would involve a different set of cost considerations, and it therefore issued an amendment to the RFQ, adding a price evaluation factor for Life-Cycle Operational and Maintenance (O&M) Support Costs. Contracting Officer's Statement of Facts (COSF) at 1-2. Those costs included certification, testing, and maintenance over the useful life of the computers. Id. at 2.

The agency identified the following five LCCs:

LIFECYCLE COST 1: DOL SECURE OPERATING SYSTEM BUILD DISK IMAGES – The cost to DOL to develop, secure, test, support, and maintain the DOL secure Operating System build disk image which is a customized installation and configuration of a Microsoft-based Operating System (currently, Windows & Enterprise), applying all the required [United States Government Configuration Baseline (USGCB)] templates, specific agency configuration requirements, hardware and software authorized for use within the operating environment, and hard disk encryption tools.

LIFECYCLE COST 2: SOFTWARE PATCH and UPDATE MANAGEMENT – The cost to DOL to test and deploy the vendor recommended security patches, drivers, and updates (manufacturer, operating system, and 3rd party) for the [information technology (IT)] equipment to ensure functionality and IT security compliance.

LIFECYCLE COST 3: HARDWARE [PERIPHERAL] TESTING, INTEGRATION AND CERTIFICATION – The cost to DOL to test, document, validate IT security compliance, validate 508 Compliance, and integrate with the DOL secure Operating System build the various new and existing IT equipment for use in the DOL operating environment.

LIFECYCLE COST 4: SOFTWARE TESTING, INTEGRATION, COMPLIANCE AND CERTIFICATION – The cost to DOL to test, document, validate IT security compliance, validate 508 Compliance and integration with the DOL secure Operating System build, the new and existing software used in the DOL operating environment.

LIFECYLCE COST 5: SUPPORT TRAINING – The cost to DOL to train support personnel (potentially including contractor personnel) in the operation and maintenance of the IT hardware.

RFQ, Amend. 8, at C-22.

The protester asserts that, if properly evaluated, the LCCs for Dell and non-Dell computers would be identical, and therefore the LCCs should be removed from the RFQ. Protest at 7. According to the protester, the only reason the agency decided to consider the LCCs is to “orchestrate a defacto or backdoor sole source award to Dell” through its misapplication of the LCCs.² Protester’s Comments at 3.

The FAR requires acquisition plans, where appropriate, to discuss how LCCs will be considered and, if they are not to be used, to explain why not. See FAR § 7.105(a)(3)(i). The protester acknowledges that LCCs can be a “valid factor” for an agency to consider as it determines the true costs of products or services. Protest at 5. Thus, the protest issue raised here is not whether an agency may reasonably include LCCs in its analysis, but whether those costs could reasonably be anything other than identical for Dell and non-Dell computers and, as the protester argues, not a proper component of the agency’s price evaluation.

As an initial matter, assuming that the protester is correct—i.e., if properly evaluated, the LCCs for Dell and non-Dell computers would be identical for all vendors—there is no possibility of prejudice associated with the agency’s inclusion of LCC’s in the RFQ. Competitive prejudice is an essential element of a viable protest; we will not sustain the protest unless the protester establishes a reasonable possibility that it has been prejudiced by the agency’s actions. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10. In this regard, the protester does not allege that inclusion of the LCCs is restrictive of competition or unfairly favors Dell products per se. To the contrary, the fundamental premise of the protester’s argument is that the LCCs would have equal application to all firms.³ To

² The protester also argues that the agency should disclose the LCC formulas and calculations in the RFQ. Protest at 8. We know of no authority for such an assertion, the protester provides none, and we thus consider this argument to be without merit.

³ The protester also generally asserts that, instead of considering the five LCCs, the agency should have considered the total cost of ownership, which, the protester argues, would have been a more accurate and comprehensive figure. Protest at 7-8. The agency maintains that it focused on specific discernable upfront costs associated with the purchase, as opposed to downstream costs such as repair and decommissioning, because such downstream costs are not “differential” costs—they should be similar or the same for all brands. Agency Reply to Protester’s Comments, Sept. 20, 2011 at 2. As with the LCC costs, it is not apparent that the protester was
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the extent there is any prejudice associated with the protester's arguments, it stems from the protester's related assumption that the agency will apply the LCCs in a way to disadvantage providers of non-Dell computers. These allegations merely anticipate improper agency action, however, and are only cognizable after the agency has completed its evaluation of vendors' quotations; at this juncture, the allegations are speculative and premature.⁴ Paramount Group, Inc., B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7.

Moreover, we find unpersuasive the protester's underlying assumption, namely, that if an agency ultimately calculates LCCs as identical for certain competing offerors, having included LCCs as part of the evaluation was improper. Having acknowledged that LCCs are a useful agency consideration in calculating its true total cost, the protester here attempts to carve out an exception--unless the LCCs are identical. Of course, the knowledge that LCCs are identical for certain offerors is also useful information for the agency, and we see nothing inherently unreasonable in a solicitation announcing that LCCs will be considered, even if those costs are ultimately determined to be equivalent. The protester's own allegation is that, where an agency finds LCCs to be equivalent, the agency "should," not "must," remove the LCCs from the solicitation. Protest at 7. Because the protester offers no persuasive legal basis for its claim that equivalent LCCs may not be included in a solicitation--

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prejudiced by the agency's failure to consider these costs since the protester does not demonstrate they would be different. In fact, the protester acknowledges that considering these costs would burden competitor's products equally. Protester's Comments, Sept. 19, 2011 at 5.

⁴ The agency proceeded with the receipt of quotations in response to the RFQ, but the protester did not submit a quote. During the course of the protest, the agency disclosed the LCCs it calculated for Dell-brand and non-Dell-brand computers; the cost adjustments reflected an added cost of \$7.89 per computer for non-Dell computers and \$2.54 for Dell-brand computers, a difference of \$5.35, whereas the ultimate awardee's per computer pricing ranged from \$962.84 to \$1,315.32. While the protester challenges the application of these costs, because it did not submit a quote, it is not an interested party to challenge the LCCs calculated by the agency. See Loral Fairchild Corp., B-242957, June 24, 1991, 91-1 CPD ¶ 594 at 5-6 (noting that, once we conclude that the terms of the solicitation are not improper, a firm that is not an offeror has no further direct economic interest and is therefore not an interested party to otherwise challenge the procurement).

nor does it even assert as much--we see no basis to challenge the reasonableness of the agency's inclusion of LCCs in this solicitation.

The protest is denied.

Lynn H. Gibson
General Counsel