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Decision

Matter of: HP Enterprise Services, LLC

File: B-405692

Date: December 14, 2011

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DIGEST

Protest arguing that agency improperly excluded protester's quotation from consideration for award is denied where protester failed to demonstrate compliance with solicitation requirement that at the time of award it have in place a General Services Administration schedule contract that would be active at the time an option to extend the task order was to be exercised

DECISION

HP Enterprise Services, LLC, of Herndon, Virginia, protests the Department of the Air Force's issuance of a task order to L-3 Services, Inc., of Reston, Virginia, pursuant to request for proposals No. FA5613-11-R-0009 (GSA e-Buy request for quotations 568808), for healthcare information management and information technology support services.¹ The protester contends that the agency improperly excluded its quotation from consideration for award.

We deny the protest.

¹ The order was issued against an L-3 General Services Administration (GSA) schedule contract.

BACKGROUND

The solicitation provided for issuance of the order to the GSA schedule contract holder submitting the lowest-priced, technically acceptable quotation. The task order was to encompass a phase-in period (the date of award through September 14, 2011), a 3-month base period (September 15-December 14, 2011), and a 9-month option period (December 15, 2011-September 14, 2012).²

Of relevance to this protest, the solicitation included a note providing that “[i]n order to be eligible for award, the Contractor’s GSA Schedule must cover the entire period of performance of the resultant contract Task Order!” Solicitation at 9. In responding to offeror questions, the agency subsequently furnished the following clarifying guidance pertaining to this requirement:

Question: Is a GSA contract holder eligible to receive the award if the TO [task order] covering GSA contract will expire during the proposed TO period of performance (POP), even with the availability of options to extend the covering GSA contract, which, if extended would cover the entire proposed TO POP?

Response: In order to be eligible for award, the Contractor’s GSA Schedule contract has to still be in an active period by the time the option to extend the term of the proposed contract Task Order will be exercised.

Agency Report (AR), Tab 5b (Questions & Responses/First Submission--Revision 1).

Six vendors, including the protester, submitted timely quotations. In its quotation, HP advised as follows:

This offer is made under the terms and conditions of HPES GSA Schedule GS-35F-0323J which expires on September 26, 2011. HPES is currently negotiating our GSA schedule for the Option period covering years 11-15 which will cover until March 31, 2014. [deleted].

HP Quotation at II-9, Protest, Exh. 4. The agency conducted discussions and requested final revisions from the vendors. In reviewing the protester’s revised quotation, which was lowest in price, the contracting officer noted that HP’s GSA schedule contract would expire on September 26, 2011; accordingly, the contracting officer sent the protester an email seeking clarification as to how it intended to comply with the requirement that its GSA schedule contract still be active at the time

² The agency explains that the order was divided into a 3-month base period and a 9-month option period due to the limited availability of fiscal year 2011 funding.

the agency would need to exercise the 9-month option period. HP responded as follows:

We are currently negotiating our GSA Schedule renewal which will extend to March 31, 2014 and will cover the option period. GSA and HPES hope to conclude negotiations by September 26, 2011. Given that both parties are negotiating in good faith, in the event that the negotiations need to continue, GSA would extend the contract. To confirm this information, please contact the Government GSA Contract Specialist [whom HP then identified by name, address, phone number, fax number, and email address].

Protest, Exh. 7 (Email from protester to contracting officer, August 24, 2011).

At the same time, the agency contacted GSA for further information regarding the extension of HP's schedule contract, and for general advice about whether it could exercise an option after the underlying contract had expired. Specifically, the Air Force's contract specialist asked whether HP's schedule contract, which was due to expire on September 26, would be extended, for how long, and, if so, when the extension would occur. A GSA representative responded that HP's schedule contract would "eventually be extended until about April 2013," but that there were "still some things to be completed." AR, Tab 13c. The GSA representative further advised that while GSA intended to extend HP's schedule contract, she could not specify the date the modification would take place. The GSA representative also offered to have the GSA team lead contact the contract specialist with an estimated date when she returned to the office.

On August 29, the Air Force contract specialist contacted the GSA team lead and sought her opinion about whether the agency could exercise an option after the GSA schedule contract expired. In response, the GSA team lead stated that "[a]lthough the Contractor is obligated to complete the Task Order (even if the contract expires) you CANNOT exercise a Task Order Option if the base Contract is Expired." AR, Tab 13d.

Based on this advice, the Air Force concluded that HP's quotation did not conform to the requirements of the solicitation and could not be accepted. According to the Air Force, "[t]he potential of having to award against a GSA schedule that may not be extended, is totally unacceptable to the Government because it does not have the time to then solicit for and award another nine-month bridge contract." AR, Tab 15, Simplified Source Selection Report, at 17.

As a result, the contracting officer proceeded to select L-3's quotation, which was technically acceptable and second-lowest in price, for award. The agency issued a

task order to L-3 on September 1 and notified the protester of the rejection of its quotation on September 2. HP protested to our Office on September 8.³

DISCUSSION

HP argues that the solicitation did not require vendors to demonstrate prior to award that their underlying GSA schedule contracts would be active at the time the 9-month option period was scheduled to be exercised. In the alternative, the protester maintains that it provided adequate assurance that its contract would be active, but that the agency improperly ignored those assurances.

With regard to the protester's first argument, where a dispute exists as to the meaning of a solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 35. Here, the agency advised offerors as follows, "In order to be eligible for award, the Contractor's GSA Schedule contract has to still be in an active period by the time the option to extend the term of the proposed contract Task Order will be exercised." AR, Tab 5b, supra.

Although the agency's instruction was awkwardly drafted, it essentially required each vendor to demonstrate, by the time of award, that it would have an active GSA schedule contract at the time the 9-month task order option was scheduled to be exercised. HP's reading of the provision as requiring only that vendors have a contract vehicle in place "by the time" the option was to be exercised is inconsistent with the express terms of the provision, which state that the agency would address the matter at the time of award, not at some future date, as HP's interpretation suggests.

Turning to the protester's second argument, the record shows that the agency concluded that the only way to be certain that the contract would be active at the time it would need to exercise the 9-month option was to examine the question as of the time of the award. While it would have been reasonable for the agency to have required something less than absolute assurance at the time of award,⁴ there was

³ Consistent with HP's earlier representation, the protester's GSA contract was modified on September 26 to extend its expiration date to November 26. Further, on November 21, the agency extended the term of HP's schedule contract through March 31, 2014.

⁴ See Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 (i.e., FSS contracts are valid for purposes of award of a contract utilizing a schedule as long as there are option periods that can be exercised that would cover the

(continued...)

nothing impermissible about the Air Force's decision to require, in its solicitation, that the question be resolved at the time of award.⁵ We note for the record that this solicitation term was not challenged by HP, and the agency evaluated HP's quotation accordingly.

The protest is denied.

Lynn H. Gibson
General Counsel

(...continued)

contract award period, and there is no indication that the FSS contract option will not be exercised).

⁵ For the record, we disagree with the Air Force's characterization of GSA's advice in this matter as inconsistent with the advice furnished by GSA in connection with the Knoll protest. Rather, they simply address two different questions: (1) whether the contractor must have an active GSA schedule contract at the time of option exercise, and (2) whether at the time an order is issued, the contractor's underlying GSA schedule contract must already be active through the date on which an option included in the order is to be exercised.