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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Metro Business Systems, LLC

File: B-296371.2

Date: July 13, 2005

Jerry Allen for the protester.

Andrea S. Grill, Esq., Corporation for National & Community Service, and Thedlus L. Thompson, Esq., General Services Administration, for the agencies.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency that purchases copiers using Federal Supply Schedule procedures is not required to disclose its requirements for network compatibility and security features where agency did not shift the burden to vendors to select what to quote; agency may consider special copier features discernable from product literature when selecting vendor for award.

DECISION

Metro Business Systems, LLC (MBS), protests the award of purchase order No. CNSHQG05026 for 16 copiers to Ameritel Corporation, a dealer of Canon Copiers, issued by the Corporation for National & Community Service under Ameritel's General Services Administration (GSA) Federal Supply Schedule (FSS) contract.

We deny the protest.

The agency sought to procure, through a "lease-to-ownership-plan," 16 multi-function copiers from a single FSS vendor to replace their existing fleet of 15 copiers.¹ The agency did not issue a solicitation to acquire these copiers. Instead, it conducted "market surveys" in February, March, and April of 2005 with five vendors and requested quotations from these vendors. Vendors were provided the model

¹ Of the current fleet, 7 were Canon brand copiers and 8 were Kodak brand.

numbers and usage charges for the existing copiers. The market surveys consisted of discussions with the vendors about their products and the agency's requirement to replace its entire fleet of copiers, a review of copier brochures and equipment manuals, and consultation with the agency's Office of Information Technology (OIT) to make sure that the copiers were compatible with the agency's network and security requirements. Declaration of Agency's Support Services Specialist, June 24, 2005, ¶¶ 11-37; Recorded Tel. Call, June 30, 2005.

Although not specifically disclosed to the vendors, the record indicates that the agency sought copiers that would fill five "critical needs" of the agency: (1) acquire new, high-quality copiers with multi-functioning capabilities at a fair and reasonable price, (2) acquire copiers from one consolidated vendor, (3) acquire copiers that were entirely compatible and "seamless" with the agency's Local Area Network (LAN), (4) acquire multi-functioning copiers that had "seamless" and easy to use security features, and (5) acquire contractor services that would most efficiently and economically (in terms of performance and cost) dispose of the current fleet of all 15 copiers.

Three of the five surveyed vendors submitted quotations. One of those vendors, Ameritel, submitted a quotation for Canon brand copiers and MBS submitted a quotation for Konica Minolta brand copiers. On April 21, 2005, the agency issued a purchase order to Ameritel for the copiers for a base year with four 1-year options, concluding that the quotation of \$109,017.20 per year provided the best value to the government at the lowest overall price.

In making this determination, the agency found that the Canon copiers quoted by Ameritel contained "added features . . . that make them a standout." For example, the agency noted that the Canon copiers included integrated scanning capability and functions that could be accessed directly from the copier or the desktop, provided better security capabilities, and were "optimized for [integration with] the [agency's] LAN environment" better than the other vendors' products. Furthermore, Ameritel's quotation included trade-ins on all of their units (other vendors offered fewer or no trade-ins²); and included unlimited training, toner, and supplies at no additional cost to the government. The firm also provided "excellent" references and was found to have "experience and technical knowledge to support the [agency's] requirements." Agency Report, Tab 16, Best Value Justification, at 1-2. In addition, Ameritel's quotation was the overall lowest in price--\$30,518.76 lower per year than MBS's next lowest priced quotation. Agency Report at 9 n.4.

MBS protests to our Office the issuance of the purchase order. It contends that the agency did not provide adequate information concerning its requirements,

² For example, MBS's quotation only provided to take away 8 of the 15 copiers.

evaluation, and basis for award.³ Specifically, it complains that it was not advised of the “special [copier] features,” such as LAN compatibility and security features, that the agency evaluated and considered to be a “critical” need or requirement, or that the agency would consider past performance. As a result, MBS argues, its quotation could not be fairly considered for award.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. The procedures for making purchases under the FSS program are set forth in Federal Acquisition Regulation (FAR) Subpart 8.4. When using these procedures, an agency is not required to issue a solicitation to request quotations, but rather may simply review vendors’ schedules and, using business judgment to determine which vendors’ goods or services represent the best value and meet the agency’s needs at the lowest overall cost, may directly place an order under the corresponding vendor’s FSS contract. FAR § 8.405-1; KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 10-11. This is contrasted with situations where an agency issues a request for quotations (RFQ) and thus shifts the burden to the vendors for selecting items from their schedule. In those instances, an agency must provide guidance about its needs and selection criteria sufficient to allow vendors to compete intelligently. See, e.g., KPMG Consulting LLP, *supra*, at 10-11. However, when an agency reviews competing vendors’ schedule offerings but does not shift to vendors the burden of selecting items to propose, there is no requirement that vendors be given notice of the agency’s needs or the selection criteria.⁴ See Merck & Co., Inc., B-295888, May 13, 2005, 2005 CPD ¶ 98 at 16; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5.

Here, the agency did not issue an RFQ to FSS vendors or shift the burden to vendors to determine what to quote. In selecting the vendor with which to place the order, the agency merely distinguished between vendors’ products based on special features that were discernable from product literature reviewed. Although the protester disagrees that LAN compatibility is discernable from the product literature, the agency provided our Office with the product literature that it reviewed and explains how the OIT was able to determine LAN compatibility from these copier manuals. The agency also notes that the brand of copiers quoted by MBS is not compatible with the agency’s LAN network, and MBS has provided no evidence that they are compatible. Furthermore, MBS admits that it can provide no other brand copiers. As GSA explains, FAR § 8.405-1(c) specifically states that an agency “may

³ MBS’s initial protest raised multiple other protest grounds, which our Office dismissed because they failed to state valid bases of protest.

⁴ As indicated, a requirement to identify selection criteria arises when vendors are called upon to select a particular configuration among multiple possibilities with no guidance about how to do so intelligently.

consider, among other factors” past performance, special features, trade-in considerations, and delivery terms in selecting among competing vendors,⁵ and, as discussed above, an agency is not required to disclose the nature of these desired or required special features when it requests quotations from vendors, where, as here, the agency does not shift to vendors the burden of selecting items to propose. Therefore, the agency did not act improperly by considering special features such as LAN capability, security capabilities, or past performance here.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ MBS initially raised other violations of FAR § 8.405-1, but then later conceded that this provision “was followed without deviation.” MBS Supplemental Comments, June 27, 2005, at 2.