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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Muddy Creek Oil and Gas, Inc.

File: B-296836

Date: August 9, 2005

Patricia Pourier for the protester.

Jeanne A. Anderson, Esq., Department of the Interior, for the agency.

Andrew J. Stephens, Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a protester's response to a request for quotations altered material terms and conditions of the solicitation, the agency reasonably determined that the quotation was unacceptable.

DECISION

Muddy Creek Oil and Gas, Inc. protests a determination by the Bureau of Indian Affairs, Department of the Interior, that Muddy Creek's quotation, submitted in response to request for quotations No. RMA00050005 (RFQ) for firefighter meals, was unacceptable.

We deny the protest.

On June 15, 2005, Muddy Creek received by fax a solicitation to provide firefighter meals. On June 22, Muddy Creek replied to the Bureau with its quotation, on the face of which the protester had handwritten a number of alterations and additions to the terms of the statement of work. The agency deemed the Muddy Creek quotation to be unacceptable because it altered material terms of the solicitation, and this protest followed.

The record here shows that where the solicitation specified that all meals be delivered to the Airport at Pine Ridge, South Dakota, Muddy Creek changed the statement of work to require that all meals be picked up at its downtown location. Agency Report, Attach. B at 23. Where the solicitation specified that the lunch meal be a sack lunch with a "sub style sandwich, chips, fruit, and candy bar," Muddy Creek added "or other sandwich of equal value that will add variety to [the] menu for

example--philly steak sandwich.” Id. Where the solicitation stated that special or modified meals may be required, Muddy Creek limited this provision to a salad option. Id. Finally, where the solicitation required that a daily count of the number of meals would be given to the vendor each day, Muddy Creek specified that the daily count must be provided one day in advance. Id.

A quotation that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. CAMS Inc., B-292546, Oct. 14, 2003, 2003 CPD ¶ 191 at 2; L.S. Womack Inc., B-244245, Sept. 30, 1991, 91-2 CPD ¶ 309 at 2. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services offered. Seaboard Elecs. Co., B-237352, Jan. 26, 1990, 90-1 CPD ¶ 115 at 3. Here, Muddy Creek’s quotation altered several material terms of this solicitation. Specifically, Muddy Creek’s quotation altered the location of deliveries, limited the type of modified meals available, and added terms regarding the advance notice of the number of meals to be provided. Since Muddy Creek’s quotation failed to conform to material terms of the solicitation, the agency correctly deemed the quotation unacceptable.

As a final matter, we recognize that certain conversations between Muddy Creek and Bureau employees may have led the company to expect that it would be awarded a sole-source contract, and that Muddy Creek apparently thought the RFQ here was that sole-source contract, and not a competitive solicitation. Once Muddy Creek received the RFQ, however, the protester’s continued expectation that it was receiving a sole-source contract was unreasonable. The solicitation indicated it was a request for quotations on its face, and it included a description of the basis for award, which listed the factors of past performance, ability to meet schedule, price, and responsiveness. Muddy Creek, therefore, should have realized the agency was not negotiating a sole-source contract, but was conducting a competition, and cannot now prevail in its protest that it was treated unreasonably when the agency rejected its quotation because of the changes Muddy Creek made to the material terms and conditions of the solicitation.

The protest is denied.

Anthony H. Gamboa
General Counsel