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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Space-Lok, Inc.

File: B-297516

Date: January 25, 2006

Jeffrey W. Wade for the protester.

Marc L. Peterson, Esq., and Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that 210-day delivery requirement was not a proper basis for issuing purchase order to another vendor--because it was not specified in solicitation and because agency's delays in evaluating quotations and issuing purchase order demonstrate that there was no need for delivery within that time--is denied; 210-day delivery requirement specified in synopsis effectively amended solicitation, and agency's delays did not negate clearly stated delivery requirement.

2. Protest that awardee will not be able to meet delivery requirement--evidenced by fact that manufacturer of its quoted items submitted quotation that did not meet the delivery requirement--is denied where agency reasonably investigated matter and concluded that awardee could meet requirement.

DECISION

Space-Lok, Inc. protests the issuance of a purchase order to UFC Aerospace under request for quotations (RFQ) No. SP0540-05-Q-9679, issued by the Defense Logistics Agency (DLA), Defense Supply Center, Philadelphia (DSCP), for self-locking barrel nuts, national stock number (NSN) 5310-01-524-8065, used in the maintenance, overhaul, and repair of U.S. Army AH-64 Apache helicopters. Space-Lok argues that DSCP improperly made award based on a 210-day delivery schedule, and that UFS cannot meet this schedule.

We deny the protest.

The solicitation, issued using simplified acquisition procedures on February 28, 2005, requested quotations for 11,408 barrel nuts, which are one component of a 3-component nut, bolt, retainer system used to attach pylons to the wings of Apache helicopters. The barrel nuts were to be delivered within 90 days. The RFQ provided for award to the vendor whose quotation represented the “best value” to the agency based on price and past performance, which were equally weighted. The past performance evaluation was to be based on vendors’ scores under DLA’s Automated Best Value System (ABVS), which scores reflect firms’ performance history.

All initial quotations received were in excess of the \$100,000 simplified acquisition threshold and exceeded the specified 90-day delivery.¹ The agency therefore abandoned the simplified acquisition approach at this juncture with the intent “to enter into a two-party, negotiated contract under [Federal Acquisition Regulation] FAR Part 15.” AR at 4. The agency did not reissue the RFQ but “used the original RFQ as a tool for purposes of an oral solicitation” and issued a synopsis on August 10, which set forth a 210-day delivery and requested revised quotations by August 12.² Id.

Four revised quotations were received, one from each of the two approved manufacturing sources--Space-Lok and SPS Technologies--and two from distributors, including UFC. All four quotations were determined to be in the competitive range and negotiations were conducted with all four vendors. Space-Lok quoted the lowest price but did not propose to supply any of the 11,408 barrel nuts within the 210-day delivery. Indeed, after discussions, Space-Lok actually increased the length of delivery, quoting 3,000 barrel nuts in 406 days, an additional 3,000 in 434 days, another 3,000 in 462 days, and the remaining 2,408 in 490 days, the longest delivery of the four vendors. Id. UFC, a distributor, quoted the second-lowest price and indicated that it would supply all 11,408 barrel nuts (purchased from SPS) within 190 days. SPS quoted the third-lowest price, and indicated that it could supply a portion of the requirement within 210 days and the remainder a short time later. The fourth vendor’s price was considered too high and its delivery did not meet the 210-day requirement. The agency determined that UFC’s quotation represented the best

¹ The agency explains that its initial price estimate was based upon erroneous Defense Logistics Information Service (DLIS) data that provided an estimated acquisition unit cost of \$4.30 for each barrel nut, resulting in an estimated price of \$49,054.40 for the 11,408 required barrel nuts. Agency Report (AR) at 4; AR, DLIS Data, Enclosure 8, at 1.

² Other than the matters discussed in this decision, the agency’s procurement approach was not protested, and we therefore do not address it.

value, because UFC was “the only contractor that meets our required delivery.”³ AR at 6.

Space-Lok principally questions the agency’s use of the 210-day delivery requirement as a basis for issuing the purchase order to UFC, asserting that the 210-day requirement was not stated in the solicitation and, in any case, did not represent the agency’s needs, as evidenced by the agency’s delays in evaluating the quotations and issuing the purchase order. In this latter regard, the protester stated a 150-day delivery in its initial quotation and contends that, had the agency timely evaluated the initial quotations, it would have been issued the purchase order.

Although the protester is correct that the 210-day delivery requirement was not stated in the solicitation, it was set forth in the August 10 synopsis issued following the change from the original simplified acquisition. Information disseminated during the course of a procurement that is in writing, signed by the contracting officer and provided to all vendors, meets all the essential elements of an amendment and—even where not designated as an amendment—is sufficient to operate as such. Linguistic Sys., Inc., B-296221, June 1, 2005, 2005 CPD ¶ 104 at 2. The August 10 synopsis met this standard, since it was issued in writing and posted and available to all vendors on the Federal Business Opportunities website. The synopsis thus became part of the solicitation, and it follows that the information in the synopsis was sufficient to establish, and to put Space-Lok on notice of, the 210-day delivery requirement.⁴ Id.

The protester’s argument that the agency unduly delayed the procurement and that Space-Lok would have been issued the purchase order if the agency had timely evaluated quotations is without merit. An agency’s delay in meeting procurement milestones is a procedural deficiency that does not provide a valid basis of protest, since it has no effect on the validity of the procurement. Dismas Charities, B-291868,

³ Although it has no impact on our decision, we note that, while the quoted language indicates that the agency viewed the 210-day delivery as a requirement, the agency did not reject any proposal for failure to meet that timeframe.

⁴ In any case, we note that the protester does not assert that it was unaware of the amended delivery requirement (its submission of a revised quotation by the revised date set forth in the synopsis indicates that it was aware of the amended requirement) or that, had the solicitation been amended in some different manner, it would have quoted based on a 210-day delivery. It thus is not clear how Space-Lok was competitively prejudiced by the way in which the delivery requirement was announced. See United Valve Co., B-295879, Apr. 25, 2005, 2005 CPD ¶ 85 at 3-4. Likewise, since the 210-day requirement represented a relaxation of the original 90-day delivery requirement, which Space-Lok did not meet in its initial quotation, invalidating the 210-day requirement would not put Space-Lok in a better competitive position.

Apr. 23, 2003, 2003 CPD ¶ 98 at 4 n.2; Trim-Flite, Inc., B-229926.4, July 28, 1988, 88-2 CPD ¶ 124 at 2. In any event, Space-Lok's protest regarding the delays is untimely. Our Bid Protest Regulations provide that protests based on alleged apparent improprieties in a solicitation must be filed before the closing date for receipt of quotations or, if the solicitation is amended, as here, before the amended closing date. 4 C.F.R. § 21.2(a)(1) (2005). Thus, to be timely, Space-Lok had to protest the allegedly unwarranted delays no later than the last extended quotation closing date, or August 12. Because Space-Lok proceeded through the procurement process and never questioned the delays until November 28 (in its response to the agency's motion to dismiss its protest), this aspect of the protest is untimely.⁵

Space-Lok asserts that UFC cannot meet the 210-day delivery, reasoning that, if SPS, UFC's manufacturer cannot meet the requirement, there is no reason to believe that UFC can.

The agency's determination that UFC is able to perform by the required delivery date is an affirmative determination of UFC's responsibility, which, because the determination that a particular vendor is capable of performing under a purchase order is largely committed to the contracting officer's discretion, we will review only under limited exceptions. 4 C.F.R. § 21.5(c). Relevant here, one exception is where a protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Id.

Even assuming that Space-Lok's argument falls within the above exception, the agency's affirmative determination of responsibility was unobjectionable; the record shows that the contracting officer and the buyer made reasonable inquiries to determine how UFC could perform at better price and delivery terms than were quoted by SPS, its manufacturer. In this regard, the agency determined that "high volume distributors such as UFC often receive price discounts from manufacturers, which they are able to pass on to their customer (the Government)." Agency Report at 8. The agency further determined that "[i]t is quite common for distributors such as UFC to do their own packaging . . . which enables them to both deliver more quickly and less expensively than if it had been performed by the manufacturer. . . ." Id. DLA went on to note that, under the contract here, UFC would package the barrel nuts at its Bay Shore, New York location. Finally, the agency noted that SPS's and UFC's different quoted terms could reflect the fact that different SPS sales

⁵ The protester also contends its ABVS score should only have been used for comparison to other manufacturers, not to distributors. However, the RFQ clearly stated that the agency intended to use ABVS scores to evaluate all vendors' past performance. Thus, in order to be timely, this allegation had to be raised prior to the closing time. 4 C.F.R. § 21.2(a)(1). Because Space-Lok did not protest until after award, this protest basis is untimely and will not be considered.

representatives were involved in handling SPS's own quote and UFC's quote. The contracting officer was satisfied that this information explained UFC's ability, as a distributor, to quote slightly better price and delivery terms than its manufacturer. Id. Space-Lok does not rebut the agency's position, and we find no basis to question it.

The protest is denied.

Anthony H. Gamboa
General Counsel