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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Free&Ben Inc.

File: B-299156

Date: February 20, 2007

Ben Emosivbe for the protester.

Lynne Georges, Esq., Defense Logistics Agency, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under procurement for plastic tent stakes, agency properly did not consider thickness of stakes in its evaluation of quotations where solicitation neither requested such information nor provided for evaluation on such a basis.

DECISION

Free&Ben Inc. protests the Defense Logistics Agency's (DLA) issuance of a purchase order for 25,000 plastic tent stakes to Middle Tennessee Plastics, Inc. (MTP). The protester speculates that MTP was given the opportunity to lower its price after the date set for receipt of quotations, thereby displacing the protester as the lowest-priced vendor. The protester also argues that the agency improperly failed to consider the thickness of the stakes offered in its evaluation.

We deny the protest.

BACKGROUND

On June 22, 2006, DLA's Defense Supply Center Philadelphia (DSCP) posted a presolicitation notice on the Federal Business Opportunities (FedBizOpps) website announcing its intention to issue a request for quotations (RFQ) for 25,000 plastic tent stakes, National Stock Number 8340-01-478-0136. On September 8, the agency posted a second notice furnishing additional information regarding the forthcoming RFQ. The second notice informed prospective vendors that the RFQ would be posted on DLA's Internet Bulletin Board System (DIBBS) and that the response date would be September 30.

When, on September 11, the contracting officer attempted to post the RFQ to the DIBBS, she was unable to do so. Due to the low dollar value of the acquisition and the fact that she “was only interested in the lowest-priced quotation that could meet the requirements of the RFQ,” the contracting officer decided to solicit those vendors who had expressed an interest in the procurement via e-mail. Agency Report (AR), Tab 4, Contracting Officer’s Affidavit at 1. The e-mail, dated September 11, explained to the prospective vendors that quotations should be sent via fax to a specified fax number and that the closing date was September 14. AR, Tab 5. The e-mail referred vendors to the modified synopsis posted on the FedBizOpps website on September 8 and furnished them with a copy of the specifications pertaining to the stakes. It also notified vendors that no drawings were available. Due to the inconsistency between the closing date specified in the presolicitation notice (September 30) and the closing date specified in the e-mail (September 14), the contracting officer subsequently extended the closing date to October 4 and notified each of the vendors who had expressed interest of the extension, via telephone.

The specifications did not furnish a great deal of information regarding required characteristics of the stakes, noting only that they were to be 12 inches long, polycarbonate, and black; that they were to be in accordance with the DSCP baseline unit (which could be examined by appointment with the contracting officer) and CN Purchase Description (PD) 01-03; that each stake was to be labeled with a pressure sensitive barcode identification; and that they needed to be packaged in a particular type of box. CN PD 01-03 described the modular general purpose tent system of which the stakes were a component; the only additional information in the PD regarding required characteristics of the stakes was that they “must be able to be installed by an individual soldier without power equipment” and that they must be able “to secure the tent through snow, rain and wind testing.” AR, Tab 5, CN PD 01-03, ¶ 3.2.4.

On September 18, Free&Ben, which had apparently just learned of the acquisition, contacted DSCP via e-mail and requested a copy of the specifications. The acquisition specialist complied with the request and advised Free&Ben that the agency was in the process of soliciting quotations and thus that Free&Ben should submit its quotation as soon as possible. AR, Tab 7. In a subsequent e-mail, the protester sought additional detail regarding required characteristics of the stakes, such as their thickness, and requested a photo or a sample. The acquisition specialist responded (via e-mail dated September 26) that since the specification was “performance based only,” it did not specify the stakes’ thickness, and that there were no drawings, photos, or samples that could be furnished. Id. On September 30, Free&Ben submitted a quotation for the stakes.

Eight quotations were received by the October 4 closing date. MTP’s unit price of \$.87 was low, and Free&Ben’s price of \$.93 was second low. Because the prices of the two vendors were lower than she had expected, the contracting officer asked

each to confirm its price. Each did. On November 7, the contracting officer issued a purchase order to MTP for 25,000 stakes at a unit price of \$.87.

ANALYSIS

The protester argues that the agency would not have asked it to confirm its price if its price had not been the lowest one submitted, meaning that MTP must have been given the opportunity to lower its price after the closing date. The protester is incorrect in assuming that the acquisition specialist's request for verification of its price signaled that the price was low. As noted above, Free&Ben's price was not lowest; it was second lowest. There is nothing in the record to support the protester's speculation that MTP was allowed to amend its price after the closing date.¹

The protester further argues that the agency should have considered the thickness of the stakes offered by the various vendors vis-à-vis the vendors' prices in its evaluation of quotations.

The only information pertaining to the stakes requested of the vendors here was price, i.e., no information regarding features of the stakes, such as their thickness, was requested. This was sufficient to place offerors on notice that price would be the only evaluation criterion. See Vistron, Inc., B-277497, Oct. 17, 1997, 97-2 CPD ¶ 107 at 4 (where a solicitation does not contain evaluation factors other than price, the general rule is that price is the sole evaluation criterion); AMBAC Int'l, B-234281, May 23, 1989, 89-1 CPD ¶ 492 at 3 n.2 (since price was the only term requested by the solicitation, price was obviously the sole evaluation criterion). Moreover, to the extent that the protester is objecting to the agency's failure to define the required

¹ It appears that the protester's misunderstanding as to the status of its quotation may have stemmed in part from the fact that when, after receiving the request for verification of its price, the protester's president contacted the contracting officer to inquire as to the reason for the request, the contracting officer told him that she "wanted to make sure that he knew what he was offering on given his low price." AR, Tab 4, Contracting Officer's Affidavit at 2. While the contracting officer apparently intended her reference to the protester's "low price" to mean the protester's lower than expected price, the protester appears to have understood the reference to mean that its price was the lowest one received. To the extent that the protester asserts that the agency should reimburse it for costs that it incurred in reliance upon its mistaken understanding that it was in line for receipt of the order, there is no basis for recovery since the protester's expenditures were the result of a business judgment exercised prior to issuance of an order and the government received no benefit as a result. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43 at 2-3.

thickness of the stakes in the specifications, its complaint pertains to an impropriety that was apparent prior to the time set for receipt of quotations; as such, to be timely, any protest of the matter would have had to be filed prior to the closing time. Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1) (2006); QuickHire, LLC, B-293098, Jan. 30, 2004, 2004 CPD ¶ 33 at 4 n.4.

Finally, Free&Ben complains that it was not informed of the extension of the closing date for receipt of quotations to October 4. Even if true, we fail to see how this resulted in any prejudice to the protester. MTP did not gain any advantage over the protester by virtue of the extension since it submitted its quotation on September 14, more than 2 weeks prior to the protester's submission. Moreover, while the protester alleges that delaying submission of its quotation by 4 days (September 30 to October 4) might have had an impact on its price if it had learned during the interim that the agency was soliciting quotations via e-mail and/or it had been furnished with additional information pertaining to stake thickness, we find neither argument persuasive. With regard to the protester's assertion that the agency's furnishing of additional information regarding stake thickness would have had an impact on its price, it is clear from the record that the agency never intended to, and in fact did not, furnish vendors with additional information regarding stake thickness. (The acquisition specialist had, after all, responded to the protester's request for such information only a few days earlier by noting that because the specification was "performance based only," it did not specify the stakes' thickness.) Regarding the protester's argument that it would have adjusted its price if it had known that the agency was soliciting quotations via e-mail because it would have anticipated more quotations clustered around the \$25,000 threshold, Protester's Comments, Jan. 14, 2007, at 2, we see no reasonable basis to think that the protester would have lowered its price, which was already well below \$25,000, just because it expected other vendors to submit prices in the vicinity of \$25,000.

The protest is denied.

Gary L. Kepplinger
General Counsel