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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Connectec Company, Inc.

File: B-310460

Date: November 27, 2007

Kimberly Stefani, Connectec Company, Inc., for the protester.
Todd Bailey, Esq., Bureau of Prisons, for the agency.
Paula J. Haurilesko, Esq., and Ralph O. White, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly rejected protester's proposal for its failure to provide delivery information is denied where the delivery information was clearly required by the solicitation, and where the solicitation indicated that the offered delivery terms would be significant in the evaluation.

DECISION

Connectec Company, Inc. protests the award of a contract to Teutech LLC by the Federal Bureau of Prisons (UNICOR) under request for proposals (RFP) No. EP2353-07 for motor vehicle hardware. Connectec contends that UNICOR improperly excluded its proposal from consideration because it lacked delivery information.

We deny the protest.

UNICOR issued, on July 19, 2007, an RFP for a 5-year, fixed-price requirements contract to supply UNICOR with motor vehicle hardware. RFP at 2, 5. The RFP was amended six times, with a final closing date of August 10. Contracting Officer's (CO) Statement at 1; RFP amendment 6, at 1. The RFP advised that the Government intended to award the contract without engaging in discussions. RFP at 6.

As relevant here, the RFP included several references to the importance of, and need for, delivery information, including:

Required delivery will be established at time of award. Please submit your best manufacturing/delivery time for evaluation and delivery schedule will be established at time of award. RFP at 2.

[S]ignificant evaluation factors are (a) past performance, (b) delivery and (c) price and price related factors. Past performance and delivery are weighted equally and are significantly more important than price. Id. at 6.

Award(s) will be based on best value to the Government with past performance and delivery significantly more important than price. Id. at 9.

In addition, the RFP at section B provided space for the offeror to fill in unit price, total amount in U.S. dollars, and delivery date. Id. at 3.

Connectec submitted its proposal on August 9, but did not include a proposed delivery schedule. CO Statement at 2. UNICOR awarded the contract to Teutech on August 20, and posted a notice of the award on August 29. Id. Subsequently, Connectec contacted UNICOR requesting an explanation of the decision to award the contract to Teutech at a higher price. Connectec Letter, Sept. 5, at 1. UNICOR explained that Connectec's proposal was rejected because it failed to include a proposed delivery schedule. CO Statement at 2. Connectec filed an agency-level protest, which UNICOR denied. CO Letter, Sept. 17. Subsequently, Connectec filed this protest.

Connectec does not disagree that it failed to provide delivery information. Instead, it contends that UNICOR should not have excluded its proposal from consideration for award because the agency has, in the past, awarded contracts based on proposals that did not contain delivery information.

Generally, a delivery schedule or time of performance requirement is regarded as a material requirement of a solicitation. See, e.g., Muddy Creek Oil and Gas, Inc., B-296836, Aug. 9, 2005, 2005 CPD ¶ 143 at 2. A proposal that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Bannum, Inc., B-291847, Mar. 17, 2003, 2003 CPD ¶ 74 at 3. Here, the RFP provided for a delivery date, stated that delivery was one of three evaluation factors, and noted twice that delivery and past performance were significantly more important than price. RFP at 6, 9. Therefore, information about an offeror's ability and intent to make timely deliveries was a material part of each proposal, and UNICOR reasonably determined that the lack of delivery information rendered Connectec's proposal technically unacceptable and ineligible for contract award.

The protester argues that it has been awarded contracts in the past without a proposed delivery schedule. Protest at 1. To support this assertion, the protester provided a prior solicitation under which it claims to have received award without providing delivery terms. Protester's Comments, Nov. 5, 2007, exh. 1. Our review of this solicitation shows that it does not use the same evaluation scheme as here; delivery was not a separate evaluation factor. Id. Furthermore, even if this assertion

is true, the protester cannot rely on past practices to excuse its failure to satisfy the requirements of the RFP here, as each procurement stands alone. GM Indus., Inc., B-231998, Oct. 25, 1988, 88-2 CPD ¶ 388 at 5.

In our view, the RFP clearly indicated that offerors must identify a delivery date in order to be considered for award. Therefore, UNICOR reasonably excluded Connectec from consideration when the company failed to include the required delivery information in its proposal.¹

The protest is denied.

Gary L. Kepplinger
General Counsel

¹ To the extent that Connectec argues that the failure of other offerors to provide delivery information is proof that the RFP was defective, and argues that UNICOR failed to highlight the need for delivery information, we have reviewed the record and find that neither of these arguments provides a basis for sustaining this protest. As noted above, the RFP sought delivery information, identified delivery as an evaluation factor, and indicated that it was one of the most important evaluation factors.