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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Computer Associates International, Inc.

File: B-292077.2

Date: September 4, 2003

Claude P. Goddard, Jr., Esq., J. Michael Littlejohn, Esq., J. William Eshelman, Esq., and Elizabeth M. Gill, Esq., Wickwire Gavin, P.C., and James M. Black, Esq., Computer Associates International, Inc., for the protester.

Marion T. Cordova, Esq., Department of Agriculture, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's argument that the solicitation is defective in that it fails to set forth the agency's actual minimum requirements is in essence a challenge to the evaluation of vendor responses, and thus is premature where award has not yet been made.
 2. Corrective action taken by the agency in response to a suspected procurement impropriety is unobjectionable where the agency has a reasonable basis for restricting the scope of revisions that vendors may make to their quotes, and the agency's corrective action resolves the suspected impropriety.
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DECISION

Computer Associates International, Inc. (CA) protests the terms of request for quotations (RFQ) No. RFQ-OPPM-3-1007VT, issued by the Office of Procurement and Property Management, Department of Agriculture (USDA), for quotes from Federal Supply Schedule (FSS) vendors for "change management" software. CA argues that the solicitation is defective in that it fails to set forth the agency's minimum requirements, and that the amended solicitation improperly precludes vendors from revising their technical quotes to address the agency's allegedly unstated minimum requirements.

We deny the protest.

The RFQ, initially issued on December 13, 2002, requested quotes from three FSS vendors, including CA, for a change management software product, to include installation, configuration, training, and maintenance, for use at the USDA National

Finance Center, New Orleans, Louisiana, and the National Information Technology Center, Kansas City, Missouri. The solicitation informed vendors of the various computer platforms and operating systems upon which the change management software would be installed, and advised that “[i]t is only essential that the functional requirements [of the proposed software] be satisfied in the same manner for each participating platform.” RFQ at 5.

The RFQ contemplated the issuance of a fixed-price purchase order for a 3-year period of performance. The solicitation also established three evaluation factors in descending order of importance: price, technical merit, and corporate experience. Award was to be made to the responsible vendor whose quote conformed to the solicitation and provided the overall “best value” to the agency, based on consideration of all factors.

The agency received three quotes, including a quote from CA, by the January 6, 2003, closing date. A technical evaluation team (TET) evaluated vendors’ technical quotes using a numeric rating system. Following both the technical and price evaluation of quotes, USDA determined that the quote of another vendor, Merant/Northrop Grumman Computing Systems, Inc., represented the best overall value.

On March 13, following a debriefing by the agency, CA filed a protest with our Office, essentially raising three issues: (1) the agency improperly evaluated CA’s technical quote, by employing the use of an unstated minimum requirement for an integrated multiple platform support solution; (2) the agency improperly evaluated CA’s price quote; and (3) the agency failed to follow the solicitation’s stated source selection criteria and failed to make a proper best value determination. Initial Protest at 2, 8-12.

On April 8, the agency notified our Office of its intent to take corrective action in response to CA’s protest. Specifically, USDA stated that its source selection decision had not been documented adequately, and that the contracting officer should have sought clarification of certain aspects of CA’s price quote.¹ Accordingly, the agency stated its intent to seek clarification from CA regarding its price quote, and once this clarification was received, to perform a new price/technical tradeoff and arrive at a new source selection decision. Letter from USDA to GAO, Apr. 8, 2003. CA then withdrew its protest in light of the agency’s proposed corrective action.

On May 16, the agency issued amendment No. 1 to the RFQ seeking price clarifications from all vendors. The amended solicitation required vendors to submit

¹ The RFQ required vendors to provide a description of all services to be provided at no cost with the purchase of the software product(s). RFQ at 16. Although CA offered to provide [DELETED]. The contracting officer then [DELETED] in the agency’s evaluation of the vendor’s price.

detailed, standardized price templates indicating the software, maintenance, training, and consulting prices being proposed.² Relevant to this protest, CA asked the contracting officer whether vendors could also submit revised technical quotes.³ Agency Report (AR), Tab H, CA Questions, May 19, 2003, at 1. The agency informed vendors that no new technical quotes would be accepted or evaluated, as the purpose of the amended solicitation was to clarify and standardize vendors' price submissions. On May 29, prior to the date for the submission of revised price quotes, CA filed this protest.

CA first contends that the solicitation is defective because it fails to set forth the agency's actual minimum requirements for an integrated multiple platform software solution. CA asserts that it is aware of the existence of an unstated minimum requirement here as a result of the debriefing it received from USDA after the initial award decision. CA argues that it is necessary for the agency to amend the solicitation to reflect its actual minimum requirements and permit vendors to submit new price and technical quotes in response thereto.⁴ We find CA's protest on this ground to be premature.⁵

² The agency specified use of standardized templates so that vendors' prices would be submitted in a uniform and consistent manner, thereby permitting the agency to conduct an "apples-to-apples" price analysis. Contracting Officer's Statement, June 4, 2003, at 2.

³ Specifically, CA asked, "[s]ince the original date of response, if an offeror's offering capability has been improved by the availability of new versions of the offered software, can vendors submit revised technical responses?" AR, Tab H, CA Questions, May 19, 2003, at 1.

⁴ USDA asserts that its evaluation of vendors' technical quotes did not employ an unstated minimum requirement for an integrated multiple platform software solution, but that the TET reasonably awarded a higher technical score to vendors who did propose an integrated software product.

⁵ As a preliminary matter, we note that where, as here, an agency solicits FSS vendor responses and provides for a technical evaluation and price/technical tradeoff—that is, uses an approach that is like a competition in a negotiated procurement, our Office will review the agency's actions, if challenged pursuant to our bid protest regulations, to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. To satisfy its obligation to treat vendors fairly, the agency should in some fashion inform vendors of its essential requirements, so that a fair and intelligent competition can be achieved. Garner Multimedia, Inc., B-291651, Feb. 11, 2003, 2003 CPD ¶ 35 at 3; Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 4; see Federal Acquisition Regulation (FAR) § 1.102-2(c)(3).

The key question is whether the protest raises an alleged solicitation impropriety, which, to be timely, must be filed prior to the time set for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2003). We conclude that it does not.

As previously stated, CA contends that the RFQ is defective because it fails to set forth the agency's actual minimum requirements (*i.e.*, that there exists an unstated minimum requirement), the proof of which is USDA's evaluation of technical quotes and debriefing statements. Notwithstanding protester's characterization of the solicitation as defective, CA is not in fact challenging the solicitation itself. Instead, CA essentially argues that the agency has unfairly evaluated the vendors' technical quotes by not acting in accordance with the terms of the solicitation. An allegation, like CA's here, that an agency's actions are not consistent with the terms of a solicitation is not a challenge to the terms of the solicitation, but a challenge to the agency's actions leading to an award decision. Because the agency here has not yet made an award decision, the protest on this ground is premature. See Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 10 n.13 (protests that merely anticipate prejudicial agency action are speculative and premature).

CA argues that its protest is not premature, and that any later-filed protest of this issue would be untimely, because of the information the protester now has in its possession regarding the agency's inaccurately stated requirements, citing our decision in Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465. In Allstate, which involved the procurement of household goods moving services, the protester alleged after contract award that the solicitation's estimated quantities did not accurately reflect the actual quantities that would be required under the awarded contract, a contention based upon the protester's experience as the incumbent contractor. Our Office determined that because the protester knew or should have known of the alleged defects in the solicitation's estimated quantities, Allstate's argument that the awardee's proposal was materially unbalanced, due to defective government estimates, was untimely.

Our decision in Allstate is inapposite to the circumstances here. In Allstate, no agency action, either consistent or inconsistent with the terms of the solicitation, was required in order for the protester to possess the information necessary to challenge the apparent improprieties of the solicitation prior to the time set for receipt of proposals. By contrast, CA's allegation of a defect in the solicitation is entirely conditional upon the agency taking action (or having taken action) inconsistent with the solicitation's stated terms. Since there has yet to be an award decision by USDA, CA's protest that the agency failed to act in accordance with the terms of the solicitation is premature.

CA also protests that the agency's corrective action taken in response to its initial protest (*i.e.*, RFQ amendment No. 1) improperly does not allow vendors to submit revised technical quotes as well as revised price quotes. CA argues that just as it is necessary for USDA to amend the RFQ and notify vendors of the unstated agency requirement for an integrated multiple platform software solution, it is also

necessary for the agency to permit vendors to submit revised technical quotes addressing this unstated requirement. CA also contends that the agency does not otherwise have a reasonable basis for precluding vendors from submitting revised technical quotes. We disagree.

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition.⁶ SMS Data Prods. Group, Inc., B-280970.4, Jan 29, 1999, 99-1 CPD ¶ 26 at 2; Patriot Contract Servs., LLC, et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. An agency's discretion when taking corrective action also extends to a decision on the scope of proposal revisions, and there are circumstances where an agency may reasonably decide to limit the revisions offerors may make to their proposals.⁷ See Rel-Tek Sys. & Design, Inc.--Modification of Remedy, supra; Serv-Air, Inc., B-258243.4, Mar. 3, 1995, 95-1 CPD ¶ 125 at 2-3; System Planning Corp., B-244697.4, June 15, 1992, 92-1 CPD ¶ 516 at 3-4. We will not question an agency's decision to restrict proposal revisions when taking corrective action so long as it is reasonable in nature and remedies the established or suspected procurement impropriety.

Under the circumstances here, it was reasonable for the agency to limit the vendors' submissions to revised price quotes. As noted above, USDA determined that its evaluation of CA's price quote may have been improper, and that the subsequent source selection decision had not been adequately documented. By contrast, the agency found nothing improper in its evaluation of the vendors' technical quotes and found no merit to CA's allegation concerning an unstated minimum requirement for an integrated multiple platform software product. The agency also determined that the cost of conducting the initial technical evaluation of quotes--and presumably, the approximate cost for conducting a second technical evaluation of quotes--was more than \$42,000. Contracting Officer's Statement, June 18, 2003, at 1; AR, Tab F, TET Leader Statement, June 20, 2003, at 2-3. In our view, USDA's limited request for price information from each vendor was a reasonable way to remedy the suspected

⁶ While the provisions of FAR Part 15, which govern contracting by negotiation, do not directly apply to competitive procurements under the FSS program, we analyze the protester's contention by the standards applied to negotiated procurements. OSI Collection Servs., Inc.; C.B. Accounts, Inc., B-286597.3 et al., June 12, 2001, 2001 CPD ¶ 103 at 4-5.

⁷ The agency discretion to limit the revisions offerors may make to their proposals exists notwithstanding that, generally, as the protester argues here, offerors in response to discussions may revise any aspect of their proposals as they see fit--including portions of their proposals which were not the subject of discussions. See Rel-Tek Sys. & Design, Inc.--Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3; FAR § 15.307(b).

procurement impropriety while not affecting other portions of vendors' quotes and the evaluation thereof. This approach has the added benefit of reducing further cost and delay in the procurement. We therefore conclude that the agency acted within its discretion in limiting the revisions vendors may make to their quotes.

CA also alleges that the agency must allow vendors to submit revised technical quotes because amendment No. 1 to the RFQ did more than simply require vendors to clarify price quotes by submitting prices on standardized pricing templates. The protester argues that the RFQ amendment here also changed basic assumptions of the procurement, principally the evaluation criteria. CA contends that since the agency does not have the discretion to announce in a solicitation that a particular evaluation scheme will be used and then use another in the actual evaluation, unless offerors are informed of the change and given the opportunity to revise their submissions with the new scheme in mind, the agency must provide vendors with the opportunity to revise their technical quotes. We find that the record does not support CA's argument here.

As set forth above, the initial RFQ established three evaluation factors in descending order of importance: price, technical merit, and corporate experience. The RFQ informed vendors that price would be considered the "highest value" factor once the baseline software product functionality had been confirmed. RFQ at 16. Award was to be made to the responsible vendor whose quote conformed to the solicitation and provided the overall best value to the agency, based on consideration of all factors. RFQ amendment No. 1 again established price, technical merit, and corporate experience, in descending order of importance, as the evaluation criteria upon which the award decision would be made. The amended solicitation also stated that while price is the highest value factor, "[technical merit] and [corporate experience] are important factors for the selection. Nothing in the Government's selection criteria indicates [price] is the overriding factor for the decision. When technical merit and corporate experience are combined they are more important than price." RFQ amend. No. 1, at 5.

While CA argues that RFQ amendment No. 1 changes the evaluation criteria by displacing price as the most important evaluation factor, we find the revised solicitation merely clarifies the preexisting relative importance of price and each of the nonprice factors. As the protester correctly recognizes, the original solicitation does not specify the relative importance of price and nonprice factors. While price was certainly the highest value factor, nothing in the original RFQ established its primacy over all other factors when combined. Hence, while the initial solicitation described price as the "highest value" factor, it nonetheless would be consistent with that description for price to be less important than the technical merit and corporate experience factors when combined (e.g., 40 percent for price, 35 percent for technical merit, and 25 percent for corporate experience). As the relevant language in RFQ amendment No. 1 (i.e., "when technical merit and corporate experience are combined, they are more important than price") thus does not contradict any

language in the original solicitation, we find that it merely clarifies and does not change the evaluation scheme upon which vendors submitted their original quotes. Additionally, we note that CA has in no way shown that the change in the evaluation scheme it asserts was accomplished by amendment No. 1 would materially affect its technical quote. In this regard, CA states only that the alleged change “might lead offerors to consider a change” in technical approach. Protester’s Comments, July 3, 2003, at 17. This statement is insufficient to show any prejudice from the agency’s allegedly improper decision not to allow revisions to the technical quotes. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (prejudice is an essential element of every viable protest); see also Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Lastly, CA contends that the agency is required to allow the protester to submit a revised technical quote based on our decision in KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196. In KPMG, a competitive procurement under the FSS program, we held that where the RFQ does not contain a late quotations clause, the contracting agency may consider quotations or quotation modifications received after the date established in the solicitation, so long as the award process has not begun and other offerors would not be prejudiced. Citing KPMG, CA argues that the agency here must accept revised technical quotations because, apparently, they are in CA’s view analogous to the late quotation involved in that case. KPMG simply does not stand for that proposition. KPMG holds that an agency may consider late quotations under certain circumstances, so long as the award process has not begun and other offerors would not be prejudiced—not that an agency must under all circumstances and at any time before award accept any quotation revisions offerors may choose to submit.

In sum, we find the agency’s corrective action taken in response to CA’s initial protest reasonably limited the vendors’ submissions to revised price quotes.

The protest is denied.

Anthony H. Gamboa
General Counsel