



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Kingdomware Technologies

File: B-407628

Date: January 9, 2013

LaTonya Barton, for the protester.

Jonathan A. Baker, Esq., Department of Health and Human Services, for the agency.

Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that terms of solicitation for notification services do not adequately communicate the agency's requirements is denied where the solicitation provides sufficient information on which vendors can compete intelligently and on a relatively equal basis.

DECISION

Kingdomware Technologies, of Waldorf, Maryland, protests the terms of request for quotations (RFQ) No. 2012-90-123B, which was issued by the Department of Health and Human Services (HHS) for on-demand notification services. The protester argues that the RFQ does not provide an accurate description of the agency's needs.

We deny the protest.

BACKGROUND

Within HHS, the Office of Preparedness and Emergency Operations (OPEO) supports HHS's capabilities to prevent, prepare for, respond to, and recover from natural public health and medical threats and emergencies. Contracting Officer Statement at 1. One of OPEO's responsibilities is to coordinate public health and medical response systems and activities. Id. As part of this coordination, the solicitation at issue here seeks quotes for a mass emergency notification system. Id. at 2; see Combined Synopsis/Solicitation at 1.

HHS issued the RFQ on September 25, 2012, as a combined synopsis/solicitation under the commercial item acquisition and simplified acquisition procedures of Federal Acquisition Regulation (FAR) Part 12 and 13.¹ Combined Synopsis/Solicitation at 1. The RFQ provided for the award of a contract for on-demand notification services for a base year and two option years. Id. The agency described its requirements in the RFQ as follows:

One year subscription for on-demand notification services with the following features; 24/7/365 access to send alerts or to modify account; 24/7/365 live operator assistance; Send email at anytime using wireless service; software for blackberry, android, and Apple iPhone; unlimited number of alert recipients; unlimited send phone alerts and text messages and for conference calls; Email SMTP-based messages to wireless devices to include carrier agnostic, end-to-end two-way wireles[s] transmission; blackberry pin messages; paging WCTP-based messaging. 100% up time; unlimited users, accounts, groups with accounts, and standard upgrades include all maintenance releases.

Id. at 1-2 (emphasis added).

The RFQ indicated that FAR § 52.212-2, Evaluation--Commercial Item, applied to the solicitation. Id. at 2. Under this provision, award would be made to the vendor whose quote was most advantageous to the government. Id.; FAR § 52.212-2(a). The RFQ identified the following factors the agency would consider to evaluate quotes: technical capabilities of the software; ease of use and training required; and price. Combined Synopsis/Solicitation at 2.

Prior to the solicitation closing, Kingdomware sought additional information about the procurement from the agency. In this regard, the firm posed more than 15 questions to the contracting officer inquiring about the number of “alert recipients . . . in the system” as well as the number of phone, text, and pager alerts and messages “sent last year.” Protest, Tab 2, Email Exchange with Contracting Officer, at 3-5. In response to nearly all of the questions, the contracting officer stated, “This is not necessary to quote due to the fact that the government requirement is for unlimited.” Id.

On October 10, HHS posted answers to the questions it received from Kingdomware and other interested vendors. As relevant here, in response to the questions from Kingdomware seeking historical information about the number of

¹ HHS posted the combined synopsis/solicitation on the FedBizOpps website and stated that a written solicitation would not be issued. Combined Synopsis/Solicitation at 1.

alerts and messages, the agency response stated, “The Government is looking for unlimited. The Government is not looking for a per alert [or per text or per minute] price but an unlimited plan.” Agency Report, Tab 1.C, Responses to Questions, at 4-6. Another vendor inquired about the “maximum number . . . of contacts” in the system, to which the agency responded “> 15,000.” Id. at 4.

Kingdomware protested the terms of the solicitation to our Office prior to the closing time for the receipt of quotes. HHS received quotes from “multiple” vendors in response to the RFQ; Kingdomware did not submit a quote. Contracting Officer Statement at 4.

DISCUSSION

In its protest, Kingdomware argues that the RFQ did not accurately describe the agency’s material specifications. Specifically, Kingdomware complains that it was unreasonable for the agency not to define the term “unlimited,” which, according to the protester, can be defined “a number of different ways.” Protest at 2. In essence, Kingdomware alleges that the term “unlimited” is ambiguous.

Where a request for quotations invites competition, vendors must be given sufficient detail to allow them to compete intelligently and on a relatively equal basis; the agency’s description of its needs must be free from ambiguity and describe the agency’s minimum needs accurately. Am. Overseas Book Co., Inc., B-276675, July 10, 1997, 97-2 CPD ¶ 12 at 2; see Richen Mgmt., LLC, B-406750, B-406850, July 31, 2012, 2012 CPD ¶ 215 at 4. However there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor or that the procuring agency remove all uncertainty from the mind of every prospective offeror. Richen Mgmt., LLC, supra, at 3; Am. Contract Servs., Inc., B-256196.2, B-256196.3, June 2, 1994, 94-1 CPD ¶ 342 at 2.

Here, we disagree with the protester that it was unreasonable for the agency not to define the term “unlimited.” As explained above, the RFQ detailed with specificity the notification services and the various features sought by the agency. These required features included the ability to send messages or alerts without any restriction or constraint on the number of recipients or the amount of messages or alerts that could be sent. In this regard, the term “unlimited” indicated that the agency required more than the ability to send a finite number of messages/alerts, and the agency did not want a cap on the number of recipients that would receive the alerts. See AHNTECH Inc., B-291998, Apr. 29, 2003, 2003 CPD ¶ 90 at 4 (GAO relies on plain meaning of language to interpret a solicitation). Additionally, the agency informed interested vendors that it expected more than 15,000 contacts in the system at any one time. The agency also made clear in the RFQ’s questions and answers that it did not want per transaction pricing but wanted quotes for an unlimited plan. Although Kingdomware argues that historical information provides

the firm a “solid basis” to prepare a quote, Comments at 4, as noted above, the agency is not required to remove all uncertainty from the mind of every prospective vendor. See Dellew Corp., B-407159, Nov. 16, 2012, 2012 CPD ¶ 341 at 5 (unobjectionable for agency not to disclose in solicitation certain historical workload data). Finally, the agency reports that “multiple” vendors submitted quotes for the RFQ’s requirement. Contracting Officer Statement at 4. On this record, we find that the agency provided sufficiently detailed information to allow vendors to compete intelligently and on a relatively equal basis under the RFQ.²

The protest is denied.

Susan A. Poling
General Counsel

² In its comments on the agency’s report, Kingdomware argues that an ambiguity exists because the word unlimited can be defined differently, such as “unlimited--for emergency use only,” “unlimited--prepaid use only,” and “unlimited postpaid.” Comments at 2-3. No qualifying language (such as “for emergency use only,” “prepaid use only,” or “postpaid”) was attached to the word unlimited in the solicitation here to suggest that alternative meanings of the word unlimited existed.