



GAO

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Government Acquisitions, Inc.; PCi Tec, Inc.

File: B-407877.2; B-407877.3; B-407877.4

Date: March 25, 2013

Richard F. Busch II, Esq., Busch Law Firm, LLC, for Government Acquisitions, Inc.; James C. Fontana, Esq., and David B. Dempsey, Esq., Dempsey Fontana, for PCi Tec, Inc.

Christopher J. Kimball, Esq., and Thomas O. Mason, Esq., Cooley LLP, for Signet Computers, Inc., an intervenor.

Richard L. Hatfield, Esq., Department of the Treasury, for the agency.

Laura Mann Eyester, Esq., for the Small Business Administration.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement that HUBZone contractors be certified “at time of solicitation and at time of award,” in order to receive highest rating under socio-economic evaluation factor, did not clearly impose requirement for certification at time of solicitation issuance as asserted by protester; at best, solicitation contained a patent ambiguity with regard to when certification had to be obtained, and post-award protest that agency’s “time of proposal submission” interpretation was unreasonable is untimely.

DECISION

Government Acquisitions, Inc. (GAI), of Cincinnati, Ohio, and PCi Tec, Inc. (PCi), of Luray, Virginia, protest the Department of the Treasury, Internal Revenue Service’s establishment of a blanket purchase agreement (BPA) with Signet Computers, Inc., of Leesburg, Virginia, under Request for Quotations (RFQ) No. TIRNO-12-Q-00083, for computer equipment and accessories. The protesters challenge the evaluation and source selection decision.¹

¹ After submitting its quotation, but before award, Signet changed its name to Strong Castle, Inc. See Agency Report (AR) at 2, n.1. Since references in the record to the
(continued...)

The protests are denied.

BACKGROUND

The RFQ, issued pursuant to Federal Acquisition Regulation (FAR) Part 8.405-3 on June 6, 2012, provided for establishment of a single BPA with a General Services Administration (GSA) Federal Supply Schedule 70 contract holder, for a base year and 4 option years, for personal computer equipment and accessories. RFQ at 2. The RFQ indicated that the acquisition was “NOT A SMALL BUSINESS SET-ASIDE.” RFQ, Standard Form 18.

Vendors were informed that the BPA would be established on a “best value” basis using a two-part evaluation. RFQ at 36. Part One of the evaluation was to be conducted on a pass/fail basis to determine compliance with Section 508 of the Rehabilitation Act of 1973² and stated specifications. RFQ § 11.1 at 36-37. Under Part Two of the evaluation, quotations were to be evaluated under the following four factors (in order of importance): socio-economic status, past performance, past experience, and price. RFQ at 38. The RFQ further advised as follows:

All non-price factors, when combined, are more important than price. A strong preference for small business participation is sought for this procurement. As quotes are determined to be technically compliant, socio-economic status becomes more important than price.

Id.

Pertinent here, the RFQ included a graphic depicting the possible ratings under the socio-economic status factor. This graphic, and the explanatory note set out immediately under it, stated:

(...continued)

awardee most typically use its former name, we will refer to the awardee as Signet, unless the context requires otherwise.

² Section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies’ electronic and information technology be accessible to people with disabilities. 29 U.S.C. § 794d (2006 & Supp. IV 2010).

Definition	Rating
*HUBZone Small Business (HUBZone) ³	Excellent
Service-Disabled Veteran-Owned Small Business (SDVOSB)	Good
All Other Small Businesses	Acceptable
Large Business	Neutral

*HUBZone contractors must be certified by the Small Business Administration (SBA) at time of solicitation and at time of award.

RFQ at 38 (emphasis added).

Ten quotations were submitted by the extended closing date of July 30, 2012, including quotations from Signet, PCi, and GAI. The agency verified the socio-economic designations claimed by all vendors, with the result that six quotations were found to be from HUBZone vendors, including those of Signet and PCi.

Price reductions and revised quotations were requested in accordance with FAR § 8.405-4. All of the revised quotations were found to be technically acceptable. Source Selection Decision (SSD), AR, Exh. D.10, at 11. Overall ratings and revised prices for the protesters' and the awardee's quotations under Part Two were as follows:

Vendor	Socio-Economic Status	Past Performance	Past Experience	Technical Rank	Revised Price
Signet	Excellent	Excellent	Excellent	1	\$79,951,522
PCi	Excellent	Excellent	Excellent	1	\$81,826,015
GAI	Acceptable	Excellent	Excellent	4	\$76,413,822

SSD at 12, 21.

The source selection authority determined that Signet's quotation represented the best value. According to the agency,

Signet and PCi both received Excellent ratings for socio-economic status, past performance and past experience. However, as Signet's price was almost \$2 million lower than PCi's, its proposal offered a

³ HUBZone refers to historically underutilized business zone.

better value to the Government. GAI also received Excellent ratings for past performance and experience and its price was \$3.5 million, or about 4 percent, lower than Signet's. However, GAI only received an acceptable rating for socio-economic status, the most important evaluation factor. Given the relatively modest price differential between Signet and GAI, Signet's technically superior proposal was determined to offer the best value.

Contracting Officer's Statement at 3. Upon learning of the resulting award to Signet on December 7, these protests followed.

HUBZONE CERTIFICATION

The protesters assert that Signet should not have received an "excellent" rating under the socio-economic evaluation factor because Signet was not a HUBZone firm at the "time of solicitation." As set forth above, the RFQ provided that to receive an "excellent" rating, "HUBZone contractors must be certified by the Small Business Administration (SBA) at time of solicitation and at time of award." RFQ at 38. In this regard, in a bidder's list dated June 20, 2012, Signet was listed as a SDVOSB, but not as a HUBZone firm. AR, Exh. D.8 at 6. On July 13, 2012, however, Signet notified the agency's small business specialist that it was certified as a HUBZone firm. AR, Exh. D.8 at 17. The SBA's certification of Signet as a HUBZone firm is dated June 22, 2012, that is, after issuance of the solicitation but before the extended closing date of July 30. AR, Exh. D.8 at 23, Letter from SBA to Signet, June 22, 2012. Signet's quotation was submitted on July 14, prior to the extended closing date. AR, Exh. D.3.1, Signet Quotation.

The protesters assert that the phrase "at time of solicitation" means the date on which the RFQ was issued. Thus, according to the protesters, since the RFQ was issued on June 6, 2012, but Signet was not certified as a HUBZone firm until June 22, Signet was ineligible for an "excellent" rating under the socio-economic factor.⁴

⁴ In addition, the protesters have asserted that Signet does not qualify as a HUBZone firm, but this is an issue we do not consider. Under 15 U.S.C. § 637(b)(6) (2000), the SBA has conclusive authority to determine matters of size status for federal purposes and our Office will neither make nor review a size status determination. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1) (2012). Similarly, the SBA is the designated authority for determining whether a firm is an eligible HUBZone small business concern. 15 U.S.C. § 632(p)(5)(A); 13 C.F.R. §§ 126.300, 126.301 (2012); FAR § 19.1303. As a consequence, our Office will neither make nor review HUBZone status determinations. See Total Industrial & Packaging Corp., B-295434, February 22, 2005, 2005 CPD ¶ 38 at 4; Ashe Facility Serv., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 17.

The agency, however, maintains that the “time of solicitation” as used in the RFQ “should extend as long as the solicitation is open, which would be at least until the time proposals were due.” AR at 4. Under this interpretation, since Signet was certified by the SBA as a HUBZone firm prior to the date quotations were due, the agency argues that it complied with the solicitation. In the alternative, the agency contends that interpreting the RFQ to require certification at the time the RFQ was initially issued would serve no useful purpose and would be unduly restrictive of competition.

We agree with the agency that nothing in the RFQ required vendors to be certified as HUBZone firms at the time the solicitation was issued in order to receive an “excellent” rating for the socio-economic evaluation factor. While one interpretation of “time of solicitation” may be when the solicitation was issued, it is not the only reasonable interpretation. As a result, we conclude that the agency complied with the terms of the solicitation.

Moreover, the solicitation was ambiguous as to the timing of the requisite HUBZone certification. See Pitney Bowes, Inc., B-294868; B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5. Where a solicitation contains a patent ambiguity, an offeror has an affirmative obligation to seek clarification prior to the first due date for responding to the solicitation following introduction of the ambiguity into the solicitation. 4 C.F.R. § 21.2(a)(1); see Dix Corp., B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3. Where a patent ambiguity is not challenged prior to submission of solicitation responses, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations as the only permissible interpretation. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8; Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. Here, since any ambiguity was apparent from the face of the RFQ, the protesters may not now assert that the only permissible interpretation of this requirement is their own.

BEST VALUE DETERMINATION

GAI also challenges the agency’s best value selection of Signet over GAI on the basis that the agency’s decision was not adequately documented, in that the explanation set forth in the source selection decision was “mechanical” and provided no “qualitative assessment.” GAI Supp. Protest at 6.

Source selection decisions must be documented, and include the rationale for any business judgments and cost/technical tradeoffs made or relied upon by the SSA. General Dynamics Info. Tech., Inc., B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4; see FAR § 15.308. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. See Terex Gov’t Programs, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and

costs of the competing proposals and that the source selection was reasonably based. Wyle Laboratories, Inc., B-407784, Feb. 19, 2013, 2013 CPD 63 at 11.

Here, with regard to the tradeoff between Signet's and GAI's quotation, the source selection decision provided as follows:

In the tradeoff of Signet Computer versus Government Acquisitions, a consideration must be made between the higher price of Signet versus the lower technical rating of Government Acquisitions. Government Acquisitions was roughly 4% cheaper than Signet Computers, yet it was inferior from a technical perspective. Government Acquisitions only achieved an "acceptable" for socio-economic status compared to Signet's "excellent." Additionally, socio-economic status was the highest technical factor. Thus, for the relatively small price difference between the two, Signet prevailed.

SSD at 23.

Although the agency's explanation of the rationale for its award decision is brief and concise, we conclude that the award decision was reasonable and adequately documented in the source selection decision. The RFQ provided that the non-price factors, when combined, were more important than price. RFQ at 38. Further, the RFQ indicated a "strong preference for small business participation," stating that "[a]s quotes are determined to be technically compliant, socio-economic status becomes more important than price." Id. Given the greater importance under the solicitation of the non-price factors generally, and specifically the solicitation's emphasis on socio-economic status, we find unobjectionable the agency's stated determination that Signet's significant advantage under the socio-economic factor--an "excellent" rating compared to GAI's "acceptable" rating--warranted payment of an approximately 4% price premium.

The protests are denied.

Susan A. Poling
General Counsel