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Decision

Matter of: Gartner Inc.

File: B-408933.2; B-408933.3

Date: February 12, 2014

Keith R. Szeliga, Esq., Jonathan S. Aronie, Esq., Anne Perry, Esq., and Franklin Turner, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.
G. Lindsay Simmons, Esq., J. Eric Whytsell, Esq., and Katherine Calogero, Esq., Jackson Kelly, PLLC, for Forrester Research, Inc.
Mark B. Grebel, Esq., and JoAnn Melesky, Esq., Department of Defense, Defense Information Systems Agency, for the agency.
K. Nicole Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly considered a late quotation where the RFQ did not contain a late submission provision expressly providing that quotations could not be considered if received after the deadline, and no other offerors were prejudiced.

DECISION

Gartner Inc., of Stamford, Connecticut, protests the issuance of a task order to Forrester Research, Inc., of Cambridge, Massachusetts, under Request for Quotations (RFQ) No. 782468, issued by the Defense Information Systems Agency (DISA), for the provision of annual subscriptions for information technology research services. Gartner argues that Forrester's final quotation revision was late and should not have been considered by DISA.

We deny the protest.

BACKGROUND

The RFQ was issued on May 23, 2013 to Department of Defense Software Initiative blanket purchase agreement (BPA) holders. These BPAs were issued under vendors' Federal Supply Schedule (FSS) contracts. The RFQ contemplated the issuance of a fixed-price task order with one base year and four one-year option periods. RFQ at 1. The RFQ established that quotations were due by June 24,

2013, at 9:00 a.m. Central Time (CT) and should be submitted to the contract specialist via a specified e-mail address. RFQ at 4. DISA timely received quotations from Gartner and Forrester by the June 24th deadline. Agency Report (AR) at 11. On August 1, after conducting discussions with both vendors, the agency issued a request for final quotations. *Id.* at 16. Offerors were instructed that final quotations and cover letters “shall be submitted no later than August 7, 2013 at 9:00 a.m. CT.” AR, Tab 11, Request for Final Quotation Revisions. They were also informed that late responses “are subject to the solicitation provision on late submissions” and notified that “the government will not grant any extensions.” *Id.* Despite the reference to the solicitation provision on late submissions, the RFQ did not in fact contain a late quotation provision. AR at 67.

On August 6, Forrester and Gartner submitted their final quotations. AR at 16. On August 7, the contracting officer received a revised technical/management section from Forrester at 9:01 a.m. CT, one minute after the deadline set in the request for final quotation revisions. *Id.* at 66. The agency accepted Forrester’s revised final quotation and evaluated both quotations. In deciding to consider Forrester’s quotation, the agency noted that Forrester’s revised quotation was received by the agency’s server at 9:00:40 CT, and by the contracting officer at 9:01 CT-- one minute after the deadline, and well before the award process had begun. Supplemental AR at 5, 12. The agency found that Forrester did not obtain any material advantage by having the opportunity to revise its quotation at the last minute, noting that Forrester did not change its price and only removed one and a half pages from the technical/management portion of its quotation. Supplemental AR at 12. Ultimately, the agency concluded that Forrester’s quotation represented the best value to the government and issued the task order to Forrester on September 16. Gartner filed an initial protest with our Office, challenging the evaluation of the quotes, on September 20. That protest was dismissed as academic on October 18, as a result of DISA’s decision to take corrective action. See Gartner Inc., B-408933, October 18, 2013.

In accordance with the corrective action, DISA reevaluated the quotations previously submitted by Forrester and Gartner, and again selected Forrester’s quotation as the best value for the government. This protest followed.

DISCUSSION

Gartner’s sole basis for protest is that DISA erred in accepting Forrester’s revised quotation because it was received by the contracting officer after the time set for submission of quotations. Protester’s Comments on Supplemental AR at 3.

It is well established that the standard for late proposals does not generally apply to requests for quotations. An RFQ, unlike a request for proposals (or an invitation for bids), does not seek offers that can be accepted by the government to form a contract. Rather, the government’s purchase order represents the offer that the

vendor may accept through performance or by a formal acceptance document. DataVault Corp., B-248664, Sept. 10, 1992, 92-2 CPD ¶ 166 at 2. It follows that language in an RFQ requesting quotations by a certain date cannot be construed as establishing a firm closing date for receipt of quotations, absent a late quotation provision expressly providing that quotations must be received by that date to be considered. Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3.

Gartner argues that the standard for late quotations does not apply in this case because, according to the protester, the solicitation contained language distinguishing it from a typical RFQ. Protester's Comments on AR, at 13. Gartner cites language in the RFQ indicating that a "contractor agrees that if its offer is accepted within 60 calendar days from the date of receipt of quotations (unless a different period is stated in the quotation), it will furnish the items and/or services identified in its quotation at the cost/price offered to the designated point(s) within the time specified in the schedule." RFQ at 4. In Gartner's view, this language in the RFQ advised offerors that the agency was seeking "offers" that could be "accepted" by the government and that, if "accepted," those "offers" would be binding. Protester's Comments on AR, at 13.

As noted above, quotations in response to an RFQ are not offers that can be accepted by the government to form a contract. See Computer Assocs. Int'l, Inc., B-292077.3 *et al.*, Jan. 22, 2004, 2004 CPD ¶ 163 at 3, *aff'd.*, Computer Assocs. Int'l, Inc.--Recon., B-292077.6, May 5, 2004, 2004 CPD ¶ 110 (holding that quotations submitted in response to an RFQ for issuance of order under Federal Supply Schedule are not offers that may be accepted to form a binding contract). Rather, they are informational responses that the government may use as the basis for issuing a purchase order. Computer Assocs. Int'l, Inc., *supra*. It is the government's purchase order which represents the offer that the vendor may accept through performance or by a formal acceptance document. *Id.*

Here, the protester's argument is based on a patent ambiguity in the solicitation. While the agency clearly identified the solicitation as a RFQ, the language cited by the protester, regarding offers and acceptance, is fundamentally inconsistent with the informational nature of quotations sought under an RFQ. A firm may not compete under a patently ambiguous solicitation and then complain when the agency proceeds in a way inconsistent with one of the possible interpretations. Rather, the firm 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. Since Gartner did not raise the matter with the agency for resolution prior to issuance of the task order, its protest on this basis is untimely.

Gartner also contends that language included in the solicitation, regarding the agency's decision not to grant extensions, constitutes a late quotation provision such that consideration of Forrester's quotation was improper. Protester's Comments on AR, at 12. According to DISA, the statement that the government "will not grant any extensions" refers to the agency not extending the deadline for submissions, and did not prohibit the agency from accepting quotations submitted after the deadline. Supplemental AR at 11. Additionally, according to DISA, while the request for final quotations referenced a solicitation provision on late submissions, as noted above, neither the RFQ nor the request for final quotations contained a provision prohibiting the agency from considering late quotations or modifications. *Id.* at 10. We agree with the agency's interpretation of the RFQ.

Where the solicitation contains a late submission provision expressly providing that quotations must be received by the stated deadline in order to be considered, quotations cannot be considered if received after the deadline. In such cases, a solicitation will expressly indicate that the agency will not consider late submissions. See, e.g., Data Integrators, Inc., B-310928, Jan. 31, 2008, 2008 CPD ¶ 27 at 1 (the solicitation incorporated a late quotation provision expressly providing that any bid "received ... after the exact time specified for receipt will not be considered"); M.Braun Inc., B-298935.2, May 21, 2007, 2007 CPD ¶ 96 at 1 (the RFQ incorporated FAR § 52.212-1(f) "Instruction to Offerors--Commercial Items," which generally precludes an agency's consideration of a late submission); Turner Consulting Group, Inc., B-400421, October 29, 2008, 2008 CPD ¶ 198 at 1 (the solicitation provided that quotes received after the exact time specified for receipt of quotes shall not be considered). In this case, however, the RFQ simply advised firms that deadline for submission was firm; it did not expressly establish that the agency would not consider quotations received after the submission deadline. Accordingly, the decision to consider Forrester's late quotation was not inconsistent with the terms of the RFQ.

The protest is denied.

Susan A. Poling
General Counsel