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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Premiums & Specialties, Inc.

File: B-410247

Date: November 13, 2014

Bob Perkins, for the protester.

Roy E. Potter, Esq., Government Printing Office, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the agency improperly rejected the firm's lowest-priced quotation for imprinted pens is sustained where the agency requested quotations via its procurement website, concluded that the protester submitted the lowest price, and made award to the next-higher-priced vendor when the protester did not respond within approximately one hour to a telephonic request to "review and confirm" its quotation.

DECISION

Premiums & Specialties, Inc. (P&S), of Cherry Hill, New Jersey, a small business, protests the issuance of a purchase order to KD8 Enterprises, LLC, of Centreville, Utah, under request for quotations (RFQ) No. 386-162 (known as "Jacket: 386-162"), issued by the Government Printing Office (GPO) for 75,000 imprinted pens. P&S argues that GPO improperly issued the order to a higher-priced vendor after improperly rejecting P&S's quotation.

We sustain the protest.

BACKGROUND

GPO issued the RFQ around August 5, 2014, seeking quotations to supply 75,000 PaperMate Inkjoy retractable white/blue pens. RFQ at 1. The RFQ directed vendors (via an Internet link) to consult a specific page on KD8's website to identify the specific model of pen. Id. The RFQ specified that the pens were to be imprinted with three lines of text: the name, the Internet address, and the phone number of "Military OneSource," and were to be delivered to a private firm (apparently another contractor) by August 29. The RFQ directed vendors to submit their quotations

using GPO's online quotation system, "Quick Quote," by 2:00 p.m. on the following day (August 6). Although not stated in the RFQ, the parties agree that it was understood that a purchase order would be issued to the firm that submitted the lowest-priced quotation.

GPO received six quotations by the 2:00 p.m. closing time on August 6. When the closing time arrived, the contracting specialist printed out a summary of quotations and determined that P&S had submitted the lowest-priced quotation, at \$19,480. Agency Report (AR), Tab 3, Abstract of Unstrapped Jackets (Unawarded), at 1.

At 2:10 p.m. that same day, the contracting specialist called P&S, and stated that he was asking the firm to "review and confirm" its quotation. AR, Tab 4, PreAward Survey Form for P&S, at 1 (handwritten notes). The senior marketing sales associate for P&S answered the call and replied that the firm's owner was at a medical appointment, and would return the call as soon as he could be reached. The contracting specialist called P&S again at 2:56 p.m. and 2:58 p.m., and was again told that the owner of P&S would return the call when he could be reached.

The parties differ over some details of the calls, which our Office attempted to discern during a telephone conference with the parties. The contracting specialist stated that during at least one of the calls, he informed P&S that GPO would proceed to consider the next higher-priced vendor if P&S did not review and confirm its quotation. In contrast, the senior marketing sales associate at P&S states that there were only two calls, and that no urgency or deadline for P&S's response was mentioned. GAO Fax to Parties, Oct. 15, 2014 (Summary of Conference Call & Testimony), at 2.

A few minutes¹ after the 2:58 p.m. call, the contracting specialist called the next higher-priced vendor, which was KD8, to ask it to review and confirm its quotation, which the firm did. AR, Tab 5, Preaward Survey for KD8, at 2 (typed note in "comments" column). GPO then issued the purchase order to KD8, for a total price of \$19,788. Declaration of Contracting Specialist at 1; AR, Tab 6, GPO Purchase Order No. 92329, at 1.

At approximately 4:00 p.m. the same day, the owner of P&S called the contracting specialist to confirm the firm's quotation. Protest at 3. One of the contracting

¹ The times recorded by the contracting specialist in the contemporaneous record differ from the times he identified in the declaration he submitted to our Office with the agency report. Where a specific time is identified in the contemporaneous record, we have used that time. Where no time is shown in the contemporaneous record (as here), and where identifying the specific time listed in the contracting specialist's declaration would cause confusion, we have used general terms.

specialist's colleagues answered, and stated that the contracting specialist had left for the day, and that the message would be relayed to him. Id.

On August 7, P&S learned that GPO had issued the purchase order to KD8. P&S submitted an agency-level protest to the contracting officer, arguing that the agency had failed to allow the firm a reasonable time to confirm its quotation, and had issued the order to a higher-priced firm without a valid basis. AR, Tab 7, P&S Agency-Level Protest, at 1. The contracting officer denied the protest on August 8, stating that a contract had to be awarded "according to the schedule written in the contract specifications to avoid any delays in the agency receiving their product by the required due date of August 24 [*sic*], 2014."² AR, Tab 8, GPO Decision on Agency-Level Protest, at 1. This protest followed.

ANALYSIS

As an initial matter, we note that GPO procurements are governed by GPO's Printing Procurement Regulation (PPR),³ rather than the Federal Acquisition Regulation (FAR). Nevertheless (just as in the case of ordinary quotations and purchase orders under the FAR), GPO purchasing regulations specify that a quotation is not an offer; rather, the quotation is informational, the purchase order is the offer, which the vendor may accept expressly or through performance (unless the purchase order specifies the means of acceptance). PPR Part VII, § 4; see generally FAR § 13.004.

P&S argues that GPO applied an unstated evaluation factor by failing to allow P&S a reasonable time--two hours--to review and confirm its quotation, and that GPO lacks a valid basis to issue the purchase order to a higher-priced vendor. Protest at 3-4.⁴

GPO argues that P&S should have expected a review-and-confirm call between 2:00 p.m. (when quotations were due), and 4:00 p.m. (when, GPO explains, its business day ends). In this regard, the agency points to a statement in the RFQ that "Furnished Material will be available for pickup by 08/06/2014." RFQ at 1. The

² The phrase "schedule written in the contract specifications," id., appears to be a reference to the delivery date of August 29 stated in the RFQ.

³ GPO's PPR is available online. See www.gpo.gov/pdfs/vendors/sfas/ppr.pdf.

⁴ P&S advises that it is familiar with GPO's use of a review-and-confirm process. P&S does not challenge the process itself, only the reasonableness of the time allowed for P&S to respond. Protest at 3; Protester's Comments at 1, 3. The agency explains that the review-and-confirm process allows it to receive oral confirmation that the vendor intends to accept the purchase order before the agency actually issues it. GAO Fax to Parties, Oct. 15, 2014 (Summary of Conference Call & Testimony), at 1.

agency argues that this statement implied that it planned to issue the order on August 6 between the 2:00 p.m. deadline and GPO's 4:00 p.m. closing time.⁵

The parties agree that GPO has a practice of making review-and-confirm calls to vendors. This review-and-confirm process is not addressed in the PPR, however. The agency argues that its process has practical benefits, such as alerting the agency to the possibility that a vendor may no longer wish to receive the order. On the other hand, GPO has not shown that the process is required (or even anticipated) by the PPR or any other GPO policy.

It is not the purpose of our bid protest function to squelch the use of innovative techniques by contracting officials. When a protest is filed, however, we will review the record to assess whether an agency has complied with requirements for competition, has conducted the procurement consistent with regulations and the terms of its solicitation, and has treated vendors fairly. See, e.g., Tipton Textile Rental, Inc., B-406372, May 9, 2012, 2012 CPD ¶ 156 at 12 (although agency was not obliged to conduct discussions in simplified acquisition, once it did so, it was required to treat competitors fairly); Russell Enters. of N. Carolina, Inc., B-292320, July 17, 2003, 2003 CPD ¶ 134 at 3 (GAO reviews simplified acquisitions to ensure that the procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation).

GPO's actions violate a fundamental premise of government procurements: that offerors must be advised of the bases upon which their proposals (or quotations, as here) will be evaluated. H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203 at 4. Specifically, it was unreasonable for the contracting specialist to provide P&S approximately 48 minutes to respond to a telephone call, when nothing in the RFQ alerted P&S that the agency's process anticipated such a short response time. Further, there is nothing in the record suggesting that P&S would fail to deliver the pens just as its quotation submitted several hours earlier indicated it would. In short, GPO points to nothing that would cast doubt on P&S's ability or intention to accept and perform the order.⁶ See AeroSage LLC, B-409627, July 2, 2014, 2014 CPD ¶ 192 at 5.

⁵ We note that the significance of the "material" itself is unclear. GPO concedes that there was, in fact, no physical material to be picked up; instead, the agency sent an electronic file to KD8 by e-mail. Fax from GAO to Parties, Oct. 15, 2014 (Summary of Conference Call & Testimony), at 1. In response to a request from our Office, id., GPO submitted a copy of the electronic file for our records; the file contained four photographs of a retractable pen. We note that the pen in the photos appears to be a different model than the one referenced by the RFQ, and is imprinted with a single line: "MilitarySaves.org" (i.e., different text than specified by the RFQ).

⁶ GPO denies its actions were based on any concerns about P&S's responsibility.

Based on our review of the contemporaneous record and GPO's explanations to our Office, the agency's decision to effectively reject P&S's quotation,⁷ and make award to a KD8 at its higher price, lacks a valid legal basis. As P&S does not challenge the review-and-confirm process itself, we express no view on its use per se. Rather, the record reflects that GPO did not provide notice that, as a condition for award, the successful vendor would have to respond affirmatively to a review-and-confirm call in an unusually short time of less than an hour.⁸

We are not persuaded by GPO's arguments that, as an experienced contractor, P&S should have been able to infer what the agency intended to do, or that the language in the RFQ regarding "Furnished Material . . . available for pickup by 08/06/2014," RFQ at 1, provided notice to vendors that they should be prepared to confirm their interest to GPO shortly after the RFQ closing time. If GPO wanted such a short "review and confirm" period, it should have made its intentions known in the solicitation, so that vendors would be on notice that GPO would "move on" to another vendor if no response was received in that time. GPO issued the order to a higher-priced vendor without a valid legal basis so we sustain the protest.

RECOMMENDATION

We recommend that GPO terminate the purchase order to KD8 for convenience of the government, and reissue the purchase order to P&S, if otherwise appropriate. In the alternative, if the order has been fully performed, we recommend that GPO reimburse P&S for the cost of preparing and submitting its quotation. In either case, we also recommend that P&S be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees (if any). 4 C.F.R. § 21.8(d)(1). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Susan A. Poling
General Counsel

⁷ GPO disputes the characterization of its actions as a rejection of P&S's quotation, or a conclusion that P&S was not responsible. Instead, the agency says that it simply "mov[ed] on to the next lowest quote." Agency Report at 2.

⁸ P&S suggests that some GPO offices expressly inform vendors that the review-and-confirm process will take a specific amount of time, in contrast to the RFQ here, which made no mention of the process itself, or its timing. Regardless, as explained above, we find unpersuasive GPO's argument that P&S should have inferred GPO's plans regarding the review-and-confirm call in this specific instance.