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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: CAMS Inc.

File: B-292546

Date: October 14, 2003

Timothy W. Knudsen for the protester.

Edward C. Hintz, Esq., and Richard Ferguson, Esq., Defense Logistics Agency, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency improperly placed an order based on a request for quotations that provided that final inspection and acceptance must be at the actual manufacturing facility based upon a quotation that provides for inspection and acceptance at facility where the supplies are to be packaged.

DECISION

CAMS Inc. protests the issuance of a purchase order to The Flinchbaugh Co., Inc. under request for quotations (RFQ) No. SP0760-03-Q-E828, a small business set-aside, issued by the Defense Supply Center Columbus (DSCC), for cable support plates. CAMS asserts that Flinchbaugh's quote is unacceptable because it failed to comply with the solicitation's inspection and acceptance requirements.

We sustain the protest.

DSCC issued the RFQ on April 14, 2003, to acquire 297 cable support plates with an option for an additional 297 plates. The RFQ provided for a "best value" award of a fixed-priced order based on a comparative assessment of "offeror's prices, quoted deliveries, and past performance." RFQ § M. By amendment, the base quantity amount was increased to 675 plates and the option quantity was increased to 675 plates. In the "Item Description," section B of the RFQ, it was stated:

FINAL INSPECTION AND ACCEPTANCE OF MATERIAL SHALL BE
AT THE ACTUAL MANUFACTURING FACILITY. TECHNICAL
INSPECTION IS REQUIRED. THE CONTRACTOR SHALL MAKE

DRAWINGS AND TECHNICAL INFORMATION AVAILABLE TO
VERIFY THAT MATERIAL MEETS ALL TECHNICAL REQUIREMENTS.
COUNT, KIND, AND CONDITION INSPECTIONS ARE NOT
ACCEPTABLE. THIS NOTE TAKES PRECEDENCE OVER MASTER
SOLICITATION PART ONE PROVISIONS, NOTE 6, QUOTATIONS BY
NON-MANUFACTURERS.

Section B also specified the requirements for preparation of delivery, including packaging. The cable support plates were identified in the RFQ as a “critical” item involving aircraft launch and recovery equipment and section B required that any major or minor waiver/deviation from the specifications be approved by the agency.

Section E of the RFQ included other clauses concerning inspection and acceptance. Specifically, the standard clause at Federal Acquisition Regulation § 52.246-2, Inspection of Supplies-Fixed Price was incorporated by reference. RFQ § E02. In section E03, the RFQ advised that “[i]nspection for compliance with contract requirements will be performed at origin by an authorized Government inspector” and that “[for contract line item numbers] described by a Military or Federal specification or purchase description contractor must present evidence showing compliance with all contract and specification requirements including preparation for delivery.” Section E03 also provided space for the quoter to list inspection points for supplies and for packaging. Section E04 provided that “[a]cceptance will be performed by an authorized Government Representative at origin” and that “[t]he point of acceptance will be the point of last inspection before shipment unless otherwise indicated by the offeror.”

DSCC received 26 quotations in response to the RFQ on May 12, 2003. Flinchbaugh submitted the lowest-priced quotation at \$23,215.50 and CAMS submitted the next lowest at \$24,286.50. Flinchbaugh, which is located in York, Pennsylvania, proposed in its quotation to manufacture the supplies at its York facility. Also in its quotation, Flinchbaugh designated as its “Packaging-Inspection and Acceptance Address” a firm located elsewhere in Pennsylvania.¹ In section E03 of the quotation, Flinchbaugh identified as inspection points the vendor’s facility under “supplies” and the aforementioned packaging facility for “packaging.” The record evidences that DSCC selected Flinchbaugh’s quotation as the “best value” on June 12 because it was the lowest-priced, technically acceptable quotation. After DSCC denied CAMS agency-level protest, this protest followed.

CAMS contends that Flinchbaugh’s quotation failed to satisfy the requirement in section B that final inspection and acceptance occur at the actual manufacturing

¹ The record reflects that the agency permitted Flinchbaugh to designate another Pennsylvania location for “Packaging-Inspection and Acceptance,” prior to placing the order.

facility for the materials because it listed a separate facility for this purpose. CAMS argues that as a result Flinchbaugh has been afforded an unfair competitive advantage because CAMS was required to include in its price the cost of meeting the inspection and acceptance terms in section B, and it asserts that had it known that the inspection and acceptance requirement in section B was not important CAMS also could have outsourced the packaging and adjusted its price accordingly. Protester's Agency-level Protest (June 16, 2003) at 2.

A quote that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. United Coatings, B-291978.2, July 7, 2003, 2003 CPD ¶ __; see Rel-Tek Sys., & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3. The terms in a solicitation governing inspection and acceptance are material requirements that must be met without qualification—regardless of whether the solicitation sets them out as minimum requirements—because they affect the government's rights under the resulting contract. See Rel-Tek Sys., & Design, Inc., *supra*.

As indicated above, Flinchbaugh's quotation specified a facility other than the actual manufacturing facility as the location for inspection and acceptance of the items it would furnish under the contract. However, section B of the solicitation expressly required final acceptance and inspection of the material to be done at the actual manufacturing facility. Thus, Flinchbaugh's quotation did not meet this material term of the RFQ relating to inspection and acceptance and cannot form the basis for issuance of an order.

DSCC essentially argues that Flinchbaugh's quotation is acceptable because section B only specifies that the final inspection and acceptance of material be done at the manufacturing facility and does not require that packaging and inspection be done exclusively at the manufacturing facility. DSCC argues that because section E of the RFQ provides for multiple inspection points, both at the manufacturing facility and at the packaging facility, it is not required that packaging be done at the manufacturing facility and thus Flinchbaugh's quotation was acceptable.

DSCC's argument does not address the problem with Flinchbaugh's quotation. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2. Here, although it is true that the RFQ did not expressly preclude the possibility of subcontracting the packaging, Flinchbaugh's quotation provided for both the inspection and acceptance at the packaging facility, instead of at the actual manufacturing facility as required by the provisions in section B. The fact that the solicitation allows multiple inspection points does not mean that acceptance can be anywhere but at the manufacturing facility, as required by the RFQ. There is only one "final acceptance" under a contract for supplies. That is, acceptance is acknowledgment by the agency that the supplies conform with applicable contract quality and quantity requirements, and title to supplies passes to the government upon formal acceptance, regardless of

when or where the government takes physical possession; this is the point where the government obtains title to the supplies and assumes the risk of loss. See FAR §§ 46.501, 46.505. Accordingly, compliance with the requirement that acceptance be at the manufacturing facility was a material term, which Flinchbaugh's quotation did not satisfy; thus, an order could not be issued based on Flinchbaugh's quotation.² See Rel-Tek Sys., & Design, Inc., supra; Scientific-Atlanta, Inc., B-255343.2, B-255343.4, Mar. 14, 1994, 94-1 CPD ¶ 325 at 9.

We recommend that DSCC determine whether the requirement in section B that inspection and acceptance can only be performed at the manufacturing facility adequately described the agency's needs. If the solicitation terms do not express the agency's actual requirements, then the agency should amend the solicitation, obtain revised quotations, and make a new vendor selection. If a firm other than Flinchbaugh is selected, we recommend that DSCC terminate Flinchbaugh's purchase order, and issue an order to the successful vendor. If the solicitation terms are appropriate, we recommend that the agency terminate Flinchbaugh's order and select a vendor based on the quotation representing the "best value" under the RFQ's evaluation scheme.³ We also recommend that the agency reimburse CAMS the reasonable costs of filing and pursuing the protest, including attorney's fees. 4 C.F.R. § 21.8(d)(1) (2003). CAMS's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

² Given the closeness of the proposed prices, we have no basis to disagree with, and the agency has not rebutted, the protester's assertions that it was prejudiced because it had to account in its price for the requirement that inspection and acceptance be done at the manufacturing facility and that it could have reduced its price if inspection and acceptance been permitted to be done at a packaging facility.

³ The record does not indicate that the agency made a qualitative evaluation of the delivery and past performance evaluation factors, but evidences that price was the only factor considered in making award. Agencies are required to evaluate quotations based on the evaluation factors set forth in the solicitation. FAR § 13.106-2(b); Forestry, Surveys & Data, B-276802.3, Aug. 13, 1997, 97-2 CPD ¶ 46 at 2. If the agency intends to consider only price in the evaluation, it should amend the RFQ to so provide; otherwise, the agency is required to evaluate quotations in accordance with the RFQ's evaluation scheme in making the vendor selection.