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Decision

Matter of: Convergys Corporation

File: B-400744

Date: January 21, 2009

Andrew J. Mohr, Esq., John J. O'Brien, Esq., and C. Kelly Kroll, Esq., Cohen Mohr LLP, for the protester.

Richard B. Oliver, Esq., and Thomas C. Papson, Esq., McKenna Long & Aldridge LLP, for the intervenor.

Jay A. Lauer, Esq., Jonathan E. English, Esq., and Linda Fallowfield, Esq., Department of Housing and Urban Development, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency unreasonably evaluated quotation as technically unacceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

DECISION

Convergys Corporation, of Cincinnati, Ohio, protests the rejection of its quotation and the issuance of a task order to Lockheed Martin Services, Inc., of Rockville, Maryland, under request for quotations (RFQ) No. R-OPC-23349, issued by the Department of Housing and Urban Development for call center services to respond to inquiries received by the Client Management Center (CMC) of the Federal Housing Administration's (FHA) Single Family Housing Program. The protester contends that the agency unreasonably evaluated its quotation.

We deny the protest.

The RFQ, issued on August 25, 2008, called for the issuance of a task order for specified call center support services; the RFQ was issued to call center contractors that had previously been awarded indefinite-delivery/indefinite-quantity contracts under the USA Contact multiple award contract, managed by the General Services

Administration, providing for task order competitions for contact center work.¹ The RFQ, which required a “turnkey multi-channel contact solution,” including facility, staff, equipment, and services, contemplated the issuance of a task order for a base year and four option periods based on the quotation deemed to represent “the greatest-value solution” under technical (including management plan, technical approach, facilities and technology infrastructure, past performance, and security plan) and price factors; the technical factor was to be significantly more important than price. RFQ attach. A at 0-1, attach. C, ¶ C.1-C.3. The RFQ advised that vendors “will be given the opportunity to clarify minor irregularities or apparent clerical mistakes” in the submissions and that the agency could make the selection based on initial quotations. Id. ¶ C.1

A vendor’s transition period had to be completed within 60 days from the assumed award date of September 24; in this regard, the RFQ specifically instructed that, although a shorter transition time could be proposed, “no timeframe beyond 60 days shall be considered.” RFQ attach. A at 1. The vendors were to describe how they would “fulfill the requirements . . . [and] not merely offer to . . . perform work in accordance with the stated requirements.” RFQ attach. B, ¶ B.2.1.3.a. Each quotation was to contain a phase-in plan demonstrating compliance with the 60-day transition period requirement, including detailed “plans and approaches for implementing the tasks and a detailed timeline identifying due dates for key deliverables and milestones that must be met during the phase-in process.” Id. ¶ B.2.1.3.d. The RFQ’s technical approach evaluation terms again emphasized that phase-in plans would be evaluated for compliance with the RFQ requirement for the vendor’s transition to be completed within 60 days; the vendors were advised that such evaluation would be conducted on a pass/fail basis, and that any firm providing a phase-in plan longer than 60 days would not be given further consideration in the evaluation for award. RFQ attach. C, ¶ C.2.1.2.

In its quotation, Convergys stated that it is “fully prepared to meet” the 60-day transition requirement, that it “will transition operations of the FHA CMC program within 60 days with support from a specialized transition project manager,” and that it “understands that a complete transition of all FHA CMC activities must occur

¹ Our Office’s consideration of the protest is authorized by section 843 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA), Pub. L. No. 110-181, 122 Stat. 3, 236-39 (2008), which modified protest limitations previously imposed by the Federal Acquisition Streamlining Act of 1994 regarding permissible protests; NDAA specifically provides that, in addition to previously permitted task order protests, a protest is authorized with regard to “an order valued in excess of \$10,000,000.” 122 Stat. 237. We view the NDAA’s authorization as extending to protests asserting, as argued here, that an agency’s selection decision failed to reasonably reflect the ground rules established for the task order competition. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 5-7.

[within] 60 days of the award date, and we are confident that our solution meets that need.” Convergys Quotation at 2, 12 and 15. To show how it would meet the 60-day transition deadline, Convergys included, as appendix A to its quotation, a “Project Phase-In Plan,” composed of three separate timelines describing the tasks or activities, as well as the milestones (and associated dates for them), involved in its planned transition. The firm’s first phase-in plan timeline, labeled “Implementation Critical Milestones,” stated an estimated project start date of September 24 and estimated project finish date of December 3 (which represents a 70-day period). This timeline identified intended milestones in the firm’s phase-in plan listed under subject headings, including headings for project initiation, planning, implementation, and transition; the last two milestone entries under the heading “Transition” are “Ramp Completion” (to occur on Monday, November 24, which, as discussed further below, is 61 days from the assumed award date of September 24), and “Project Management Transition to Operations” (to occur on Wednesday, December 3, the 70th day from the award date).

The firm’s next phase-in plan timeline, labeled “Implementation Timeline,” included the same estimated project start and end dates (September 24 to December 3); under the “Transition” task heading, 10 tasks were listed, including “Ramp Completion” (on November 24) and “Project Management Transition to Operations” (on December 3).

On the firm’s third phase-in plan timeline, labeled “High-Level Implementation Timeline,” Convergys once more indicated that the estimated performance period for the project phase-in plan was September 24 to December 3 (again, representing a span of 70 days). This third timeline, we note, started with an incorrect calculation by the firm of the duration of time represented by the timeline’s stated implementation schedule; while the timeline included a statement of tasks from September 24 to December 3, it erroneously stated that those dates reflect a 50-day duration (*i.e.*, rather than the 70-day period that actually exists between those dates). The timeline otherwise generally confirmed the information that is in its other two transition timelines; for instance, in the list of tasks identified under the “Transition” heading of this project phase-in plan timeline, the firm again provided that its “Ramp Completion” will occur on November 24 and its “Project Management Transition to Operations” will occur on December 3. No explanatory narratives were provided in the firm’s quotation to describe the specific tasks or dates presented in the protester’s quotation’s three timelines, including the firm’s planned conclusion of its transition period.

The agency evaluators found the protester’s intended phase-in plan unclear because it presented conflicting information; on the one hand, the firm’s general narrative indicated an intent to comply with the 60-day transition requirement, yet, on the other hand, the phase-in plan Convergys intended, described in at least three separate timelines in the Convergys quotation, included activities identified by the firm as transition-related tasks that extended to the 70th day after the award. The protester’s quotation was rejected as technically unacceptable for failing to meet the RFQ’s minimum requirement for the vendor’s phase-in plan to be completed within

60 days of award; two other quotations also were rejected for failing to meet the requirement. The three remaining quotations were evaluated under the RFQ's evaluation factors; two were considered unsatisfactory and the third, Lockheed Martin's quotation, was rated very good. The agency concluded that Lockheed Martin's quotation was reasonably priced, at a price below the government's estimate for the work, and a task order was issued to that firm.² This protest followed.

Convergys argues that the agency unreasonably interpreted its quotation with respect to the 60-day transition requirement and, thus, improperly rejected it as technically unacceptable. The protester contends that its "ramp completion" date of November 24 should have been considered the end date of its transition period. In this regard, Convergys contends that the tasks set out in its phase-in plan that were to take place after the date of ramp completion, concluding with its "Project Management Transition to Operations" on December 3, should have been considered post-transition period activities.

A vendor has the burden of submitting an adequately written response to the solicitation. PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15. A proposal or quotation that fails to conform to material terms of the solicitation should be considered unacceptable. See Rel-Tek Sys. & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3. Our review of the record here shows that the agency's evaluation of the protester's quotation was reasonable.

As stated above, vendors were to provide a detailed demonstration that their intended phase-in plans would be completed within 60 days of award; firms were specifically instructed that mere statements of a firm's intent to comply with this requirement would be insufficient. Our review of the record confirms the reasonableness of the agency's evaluation of the protester's quotation based on its interpretation that each one of the three detailed implementation timelines provided by Convergys shows a transition period lasting 70 days from award. Each timeline stated that the project start and finish dates for the phase-in plan extended from September 24 to December 3, a period of 70 days, and each timeline listed tasks as transition activities (under each timeline's subject heading for transition-related work) that extended until December 3, including project management transition to

² Convergys suggests that a new competition should be conducted, with an opportunity for new technical quotations, to allow for a more comprehensive review of the reasonableness of Lockheed's price than the agency's comparison of the quotation to the agency's estimate for the cost of the work. This contention is without merit; the protester has not shown that a different kind of price evaluation than was conducted was required by the RFQ here.

operations.³ While, as noted above, the quotation included general statements of the firm's intent to comply, the quotation's specific references clearly indicated that the protester's intended phase-in plan would not comply with the RFQ's material 60-day transition period requirement. Accordingly, given the conflicting information in the Convergys quotation, we see no basis to question the agency's evaluation of the quotation,⁴ or the resulting rejection of the quotation as technically unacceptable under the terms of the RFQ. See Nu-Way, Inc., B-296435.5, B-296435.10, Sept. 28, 2005, 2005 CPD ¶ 195 at 4; Carson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 6.

The protester also contends that under the terms of the RFQ here, it should have been allowed to clarify the quotation's perceived failure to meet the 60-day transition requirement, since, according to Convergys, it was merely a minor irregularity or clerical mistake in its quotation. Given that any revisions to the quotation in this area would be for the purpose of making the quotation technically acceptable, we do not agree that the quotation's failure unequivocally to meet the 60-day transition

³ We do not find persuasive the protester's suggestion that project management transition should not be considered relevant to its transition phase-in plan or that the agency's consideration of it indicates the use of an unstated evaluation factor under the RFQ; clearly, project management transition to operations was a relevant consideration for the agency in its evaluation of the vendors' phase-in plans and was identified by the protester as part of its phase-in plan. See TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 at 2.

⁴ We also find no support in the record for the protester's suggestion that its use of bold print for the phrase "Ramp Completion" in one of its timelines or the use of a blank space between that entry and its subsequent task entries in the other two timelines indicated the latter tasks were to take place after the firm's transition was completed upon ramp completion. There was no explanation in the quotation to suggest the latter entries were not part of the transition-related tasks of its phase-in plan; rather, as stated above, the tasks in question were repeatedly presented under headings entitled "Transition" as transition-related activities scheduled to occur subsequent to the task "Ramp Completion," (a term which itself was not described or explained). In any event, we note that, while the agency did not identify this as a concern in the protester's quotation, the protester's position that its ramp completion date of Monday, November 24 shows compliance with the RFQ's 60-day requirement is questionable, at best. As the intervenor points out, Monday, November 24 is actually 61 days after the assumed September 24 award date. To the extent the protester suggests that Sunday, November 23, the 60th day, should not count in the calculation of the timely completion of the transition period, the protester cites no RFQ provision permitting such calculation; rather, the RFQ's terms lend support to the inclusion of Sunday, November 23, as the RFQ specifically required vendors to commit to performance of work on Sundays, as needed.

requirement is a minor irregularity or clerical error for which the RFQ provided clarifications would be conducted. See, e.g., eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5.⁵

Convergys also argues that the agency conducted unequal evaluations and clarifications with Lockheed Martin. Specifically, Convergys suggests that unequal evaluations occurred in that Lockheed Martin's quotation indicated that it planned to perform two transition tasks beyond the 60-day transition period; however, it is clear from the RFQ that the referenced tasks are required to be completed within a 90-day period (not a 60-day period as the protester alleges), and Lockheed Martin's quotation complied with this requirement. Convergys further argues that since the agency engaged in clarifications with Lockheed Martin, it should have done the same with Convergys. The record shows that the agency allowed Lockheed Martin to clarify a minor pricing aspect of its quotation; under the terms of the RFQ here, this clearly fell within the provision regarding clarifications. In contrast, as discussed above, any opportunity to address the issues in the Convergys quotation regarding compliance with the 60-day transition plan requirement would not have constituted clarifications under the RFQ. Accordingly, there clearly is no support in the record for the protester's contention that it and Lockheed Martin were treated differently in this regard under the terms of the RFQ.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁵ We note that our decision here is based on the terms of the current solicitation and the facts of this case. We recognize that the ground rules established for various task order competitions may properly differ from, for example, the ground rules for communications established for other types of procurements, including, for example, procurements conducted pursuant to Federal Acquisition Regulation Part 15. Triple Canopy, Inc., supra, at 7.