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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: CHE Consulting, Inc.

File: B-406639

Date: June 28, 2012

Steven E. Kellogg, Esq., The Kellogg Law Firm, P.C., for the protester.
Mark Langstein, Esq., Department of Commerce, for the agency.
Scott H. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the record shows that contracting agency reasonably determined that protester's quotation was unacceptable due to an ambiguity relating to the period of performance.

DECISION

CHE Consulting, Inc., of Fenton, Missouri, protests the rejection of its quote under request for quotes (RFQ) No. RFQ661324, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for computer maintenance services. CHE asserts that the agency unreasonably found that its quotation contained an ambiguity which rendered it unacceptable.

We deny the protest.

The RFQ, issued on March 27, 2012, contemplated the issuance of a fixed-price task order for a 1-year period of performance under the successful firm's General Services Administration Federal Supply Schedule contract. The solicitation specified a period of performance from April 1, 2012 to March 31, 2013. RFQ clause XI.

In response to the RFQ, NOAA received eight quotes by the March 30 deadline and CHE submitted the lowest price. The agency rejected CHE's quote because the agency concluded that CHE's quote appeared ambiguous with regard to the solicitation's period of performance. Specifically, the CHE quote included the following language:

Identifying the parts a customer requires to support their system platforms is the key to being successful. We accomplish parts identification through a thorough comprehensive on site systems platform audit prior to our contractual responsibility beginning.

CHE Quote at 13. Elsewhere, CHE's quote included the notation: "Contract Start Date: To be Determined (TBD)," and identified the period of performance as follows: "Term: 12 months 1 Apr 2012 – 31 Mar 2013." CHE Quote, Schedule of Services, at 1.

NOAA concluded that CHE's quote was ambiguous because it appeared to have qualified its obligation under the terms of the RFQ to provide the computer maintenance services from April 1, 2012 to March 31, 2013. Agency Report, exh. 7, at 2. The agency awarded the task order to SMS Systems Maintenance Services, the incumbent and the firm submitting the second lowest price. After being advised of the agency's rejection of its quote and award to SMS, CHE filed this protest.

CHE asserts that the agency improperly rejected its quote. According to the protester, it unambiguously offered to perform the contract during the period of performance and was simply offering its parts audit as an additional service at no cost to the government. CHE also maintains that its parts audit would have taken it no more than a day to perform and that there was enough time between when its quote was due under the terms of the RFQ (March 30) and when performance was to begin (April 1) for it to have performed its parts audit; according to the protester, anyone familiar with the industry—including the agency's personnel—would have known this. We find no merit to the protest.

In reviewing protests of an agency's evaluation, our Office does not reevaluate vendors' quotations; rather, we review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 2. A proposal or quotation that contains an ambiguity as to whether the offeror will comply with a material requirement of the solicitation renders the proposal or quotation unacceptable. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 7 n.6; Rel-Tek Sys. & Design, Inc., B-280463.3, Nov. 25, 1998, 99-1 CPD ¶ 2 at 3.

We find that NOAA reasonably concluded that CHE's quote was ambiguous regarding whether CHE intended to meet the RFQ's requirements with respect to the period of performance. The agency concluded that the express terms of CHE's quote conditioned the firm's contractual responsibility—in effect its legal obligation to perform—on its completion of the parts audit. The record also shows that there was no basis to understand, from the information included in CHE's quote, how long the protester's proposed parts audit would take and, correspondingly, whether it could be completed in the time between when its quote was submitted and the RFQ's

contemplated start date for performance. CHE introduced additional uncertainty regarding whether it intended to perform in accordance with the terms of the RFQ's period of performance by stating that the start date for performance was 'to be determined.'

In view of these considerations, and in light of the fact that it was incumbent upon CHE to submit an adequately written quote, we conclude that the agency properly rejected the quote from further consideration because it was ambiguous.¹

The protest is denied.

Lynn H. Gibson
General Counsel

¹ CHE also suggests that the agency unreasonably interpreted its quote and only allowed for a short period of time from the issuance of the RFQ to the date of performance in an effort to ensure that award would be made to SMS, on what CHE characterizes as a sole-source basis. To the extent that CHE thought there was an inadequate amount of time between the issuance of the RFQ and the contemplated period of performance, it was required to raise its concern before the deadline for submitting quotes, since such a concern amounts to an alleged impropriety apparent on the face of the solicitation. Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1) (2012). In any event, in light of the fact that there were seven firms remaining in the competition after the elimination of the CHE quote, we find no merit to the suggestion that the agency unreasonably interpreted the CHE quote in an effort to make award to SMS on a sole-source basis.